TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~654~~ 391

ANDREW McMICKEN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED JULY 5TH, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 654.

ANDREW McMICKEN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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District court of the United States for the district of Louisiana.

ANDREW MCMICKEN
vs.
THE UNITED STATES. } No. 26. Appeal.

R. H. & J. L. Bradford for plaintiff, appellant; J. R. Beckwith, U. S. atty., for defendant, appellee.

Returnable to the Supreme Court of the U. S. the 2d Monday of October, 1874.

1 U. S. district court for the district of Louisiana.

ANDREW MCMICKEN
vs.
UNITED STATES. } No. 26. Land case.

Petition.—Filed 26th March, 1873.

To the honorable judge of the district court of the United States for the district of Louisiana:

This petition of Andrew McMicken, a citizen of the State of Ohio, residing at Westwood, in the county of Hamilton, in said State, respectfully represents:

That on the 17th day of December, 1798, William Coleman made his petition or application in writing, addressed to Don Manuel Gayose de Lemos, governor-general of the Spanish provinces of Louisiana & West Florida, soliciting a grant of land in the district of Baton Rouge,
2 at the distance of three miles from the Mississippi River.

That the said Coleman, upon application to Don Vincent Sebastian Pintado, deputy surveyor of the province of West Florida, was informed by the said surveyor that the lands solicited were not vacant in the place indicated, & on the 19th day of December, 1798, the said surveyor gave to the said Coleman a certificate in writing showing that lands were vacant to the extent solicited in the district of Saint Helena, to wit, 610 arpents in front on the west bank of the river Tangipahoa, & contiguous & south of the 31st degree of latitude north of the equator.

That on the 22nd of December, 1798, Don Carlos de Grand Prè, governor & subdelegate of the post of Baton Rouge, gave to the said Coleman a recommendation in writing, directed to the said governor general Don Manuel Gayoso de Lemos, in which he recommended the said Coleman as a fit & proper person to receive a grant of land of 410 arpents front in the place described in the said certificate of the said deputy surveyor, Pintando.

That on the 2nd day of January, 1799, Manuel Gayoso de Lemos, governor-general aforesaid, did give, grant, & concede to & in favor of the said William Coleman an order of survey or concession directed to the surveyor-general, Don Carlos Trudeau, directing him to survey & locate for the said Coleman a tract of land of 40 arpents in depth with 410 arpents in front, being 16,400 arpents superfices, equal to
3 13,848.82 acres, on the west bank of the river Tangipahoa, & contiguous to, adjoining, & south of the 31st degree of latitude north from the equator, directing the surveyor-general to make due return thereof, in order that the title in due form should issue thereupon to the interested party.

That afterwards, to wit, on the 26th of February, 1806, the Spanish

authorities at Baton Rouge recognized the validity of said proceedings as creating a concession in favor of said Coleman, for this, to wit, that on said day the said Don Vincent Sebastian Pintado, then surveyor-general of the province of West Florida, made his appointment, or commission in writing, directing the deputy surveyor, Ira C. Kneeland, to survey the land granted in the manner & place set forth in the said order of survey, in which commission & order express reference is made to all of the proceedings constituting the concession aforesaid to the said William Coleman.

All of which will more fully appear by reference to the accompanying documents marked "A" & "A²," hereto annexed & made part of this petition.

That the said petition, order, & other written evidences of title emanated from the foreign government of Spain, & bear date prior to the cession to the United States of the district in which said land is situated, & during the period when the said government of Spain had the actual possession of & claimed sovereignty over said district.

4 That the said William Coleman being thus invested with title to the said land, did, on the 16th day of September, 1814, sell & convey & deliver the same unto Charles McMicken, jr., for a valuable consideration, as will more fully appear by reference to the document marked "B," being original deed from the said Coleman to the said McMicken, herewith filed as a part of this petition.

That on the 26th of December, 1824, the said McMicken presented his title or claim to the said land to the commissioners of land-claims at St. Helena court-house, for the district east of the island of New Orleans & west of Pearl River, to be by them recorded & presented to Congress for recognition, as the same will appear by reference to the original notice of claim, marked "C," herewith filed as a part hereof.

That the said commissioners in due time recorded said claim, & on the 19th January, 1825, made their report on the same, which was submitted to the Senate of the United States on the 28th December, 1825, & in said report classed the said claim as No. 22 in their register D, as one, in their opinion, ought not to be confirmed by the United States; all of which will appear by the 4th vol. of the State Papers, Public Lands, Green's edition, from page 310 to 316, inclusive.

And your petitioner further shows that the aforesaid application of William Coleman, the certificate of Pintado, the recommendation of De Grand Prè, the order of survey or concession of De Lemos,

5 & the appointment of Kneeland to make the survey, as set forth & referred to hereinbefore, had the effect of constituting a title to the land described in favor of said William Coleman, & vesting said title in him agreeably to the laws, usages, & customs of Spain then in force & operation in her provinces of Louisiana & West Florida, & that said title was protected & secured by the treaty between the United States & the French republic of the 30th April, 1803, & also was ratified & confirmed by the 8th article of the treaty between the U. S. & Spain of the 22nd of February, 1819.

And petitioner further shows that said land has not been in possession of nor cultivated by the said William Coleman, nor those holding under him, for a period of twenty years preceding the filing of this petition.

That said land has been severed from the domain by separation therefrom by definition of fixed natural & ascertainable boundaries & initial points, courses, & distances by the competent authority prior to

the cession to the United States of the territory in which said lands are situated.

And your petitioner further shows that the United States, disregarding the aforesaid title of petitioner, have extended their system of surveys over the whole of said land, & have made sales, donations, & other alienations & dispositions to other persons than petitioner of the whole of said land.

6 That the lands thus embraced in surveys made by the United States, according to the legal divisions & subdivisions of said surveys, will more fully appear by reference to the accompanying map or exhibit, marked "D," made a part of this petition, which said lands are supposed to be covered by the claim of petitioner designated by the deep purple line drawn forty arpents from the river Tangipahoa & extending down the same four hundred & ten arpents.

And petitioner further shows that by act of Congress No. 50 of the 8th of April, 1812, the State of Louisiana was admitted into the Union of the United States.

That by act of Congress No. 57, of the 14th April, 1812, the boundaries of the State were extended to embrace that part of the present State east of the Mississippi River & north of Bayou Manchac & the lakes, now known as the West Florida parishes, & containing said grant, which is now situated in the parish of Tangipahoa, in said State.

And petitioner further shows that the said Charles McMicken departed this life in the year 1858, in the city of Cincinnati, & State of Ohio, leaving a will wherein the said property was devised to your petitioner in trust for the use & benefit of the wife of your petitioner, Rachel Ann, during the term of her life, & after her death to the children of your petitioner & his said wife, share & share alike.

7 That said will was duly probated in the probate court of Hamilton County, Ohio, & ordered to be executed, as will more fully appear by document "E," hereto annexed as part hereof, & that the same has also been duly probated & ordered to be executed in the probate court for the parish of Orleans & State of Louisiana.

That by act of Congress No. 188, of 22nd June, 1860, revived and re-enacted for three years by the act of 10th June, 1872, this court is vested with jurisdiction of this suit.

That petitioner is entitled, as trustee aforesaid, under international law, treaty-stipulations, and the legislation of the United States, to judicial recognition and confirmation of the said grant of sixteen thousand four hundred arpents.

Wherefore petitioner prays that the United States, through the district attorney for the district of Louisiana, may be cited to answer hereto.

That after due proceedings had, petitioners' said claim to sixteen thousand four hundred arpents of land, equal to thirteen thousand eight hundred & forty-eight & eighty-two hundredths of an American acre, (13,848.82,) may be recognized as a complete grant, valid against the United States, & that for so much of said land as may be found to have been sold or disposed of by the United States before judgment herein, or may be ascertained by the United States surveyor-general to

8 be incapable of survey & location by the United States, petitioner may be empowered, as trustee aforesaid, to make entries on any of the public lands of the United States subject to private entry at $1.25 per acre.

And petitioner prays for costs & for general relief.

By his attorneys,

(Signed) R. H. AND J. L. BRADFORD.

James L. Bradford, being duly sworn, says that the allegations in the within petition are true, & that the plan or document "D" truly represents the lands claimed, which are covered, or supposed to be covered, by the divisions & subdivisions of the surveys made by the United States.

That the petitioner resides out of the State of Louisiana and parish of Orleans, & that he is agent or attorney for said petitioner in this proceeding.

(Signed) J. L. BRADFORD.

Sworn to & subscribed before me this 26' March, 1873.

[SEAL.] (Signed) CHAS. CLAIBORNE,
U. S. Com.

9 (Indorsed:) 26. U. S. dist. court, dist of La. Andrew McMicken vs. United States. No. 26. Petition. Service of this petition acknowledged to have been made this 26 March, 1873. (Signed) J. W. Gurley, asst. U. S. atty. Filed March 26, '73. (Signed) K. Loew, dy. clk.

Sor. Gobor. Gral.:

Al suplicante puede V. S. si fuera de su agrado, conferirsele quatro cientos y diez arpanes en el paraje indicado en el adjunto certificado del agrimensor, siendo arreglado á lo prevenido en el particular.

10 Baton Rouge, 22 de Dbre. de 1798.

CARLOS DE GRANDPRÉ.

Señor Gobor. Gral.:

Guillermo Coleman, habitante de la Nueva Feliciana, ante V. S., con todo respeto dice: que deseoso de establecerse á facilitar su subsistencia, A. V. S. humildemente suplica se digne por un efecto de su bondad concederle seiscientos diez arpanes de tierra para formar una habitacion, y establecerse en ella en el distrito de Baton Rouge, á tres millas del Mississippi.

Gracia qe. espera recibir de la justa piedad de V. S.

Baton Rouge, 17 de Diciembre de 1798.

WILLIAM COLEMAN.

NUEVA ORLEANS, 2 *de Enero de* 1799.

El agrimensor de esta provincia Dn. Carlos Trudeau establecerá esta parte sobre quatrocientos y diez arpanes de tierra de frente en el parage indicado en el certificado antecedente, estando vacantes y

11 no causando perjuicio alguno, con la expresa condicion de hacer el camino y desmonte regular en el termino perentorio de un año y de quedar nula esta concession si al expirar el preciso espacio de tres la tierra no se hallare establecida y de no poder enagenarla en los mismos, baxo cuio supuesto se extenderan á continuacion las diligencias de apeo que me remiterá para proveer al interesado del correspondte. título en forma.

MANUEL GAYOSO DE LEMOS.

The words "y diez," between the 3rd & 4th lines above this, interlined and valid. Clerk.

Certifico á favor de Guillermo Coleman que se hallan tierras vacantes en el distrito de Sta. Helena, y margen occidental del rio Tanchipaho

impezando en la linea de demarcacion ó paralelo de 31 grados al
12 norte del equador, en cuio parage se pondran hallar los arpanes de frente que solicita dho. Coleman y que dice haberle prometido el gobierno: pero excluiendo siempre la porcion que ocupe y corresponda á qualesqa poblador que en dho. espacio pueda haberse establecida con licencia del gobierno ó por otra causa legitima.

Nueva Feliciana, 19 de Diciembre de 1798.

VICENTE PINTADO,
Agrimenor.

UNITED STATES CONSOLIDATED LAND-OFFICE,
New Orleaans, La., March 24th, 1873.

I certify that the foregoing three pages and this page are true, complete, & accurate copies from the records of the commissioners, Rannells & Kintchin, Book B, No. 1, of the petition of Wm. Coleman, the certificate of the surveyor, Pintado; the recommendation of De Grandpré, & the concession or order of survey of De Lemos, said records
13 being now on file in this office as part of the records of this office.

(Signed) CHAS. BARNARD,
Register.

(Indorsed:) A. Andrew McMicken, trustee, vs. United States. No. 26. Filed March 26th, 1873. (Signed) J. A. Charbonnet, dy. clk.

Senor Governor-General:

Your excellency, should it be to its liking, may concede to the petitioner four hundred & ten arpents in the place indicated in the annexed certificate of the surveyor, the same being in conformity with that which is prescribed on the subject-matter.

Baton Rouge, 22 December, 1798.

CARLOS DE GRANDPRÉ.

Senor Governor-General:

William Coleman, an inhabitant of New Feliciana, represents to your excellency, with all the due respect, that being desirous of establishing himself so as to better his livelihood, he himself beseeches your excellency, to deign, as a consequence of your graciousness, to grant him six hundred & ten arpents of land, in order to make a plantation and settle himself thereupon, in the district of Baton Rouge, three miles from the Mississippi, a grace which he expects to receive from the just mercy of your excellency.

14 Baton Rouge, 17th December, 1798.

WILLIAM COLEMAN.

NEW ORLEANS, *2d January,* 1799.

The surveyor of this province, Don Carlos Trudeau, shall locate this interested party on four hundred & ten arpents of land, front in the place indicated in the foregoing certificate, they being vacant, (lands,) & thereby not causing injury to any one, with the express condition to make the high road & do the usual clearing of timber in the absolutely fixed limit in one year, & that this concession is to remain null & void if at the expiration of the precise space of three years the land shall not be found to be settled upon, & to not be able to alienate it (the land) within the same three, (years,) under which supposition there shall be carried out uninterruptedly the proceedings of the survey, which he

(the surveyor) shall transmit to me, so as to provide the interested party with the corresponding title-papers in due form.

MANUEL GAYOSO DE LEMOS.

Recorded.

I certify, in behalf of William Coleman, that there are vacant lands in the district of St. Helena, & west bank of the river Tangipahoa, beginning at the line of demarcation or parallel of 31st degree north of the equator, in which place can be found the arpents front which
15 said Coleman petitions for, & which he says the government has promised him, yet at all times excluding therefrom the portion which may belong to whichsoever settler who may have located himself within said extent (of country) with the permission of the government, or through some other lawful reason.

New Feliciana, 19th of December, 1798.

VINCENTE PINTADO,
Surveyor.

On this 17th day of March, A. D. 1873, before me, the undersigned, clerk of the U. S. dist. court for the district of Louisiana, personally came Mr. Thomas E. Evershed, who, being duly sworn, doth say that he is familiar with the Spanish language, & competent to make correct translations therefrom into English; that the foregoing (three) pages & this page contain true & correct translations made by him into English of the Spanish documents contained in Document A, being the petition of William Coleman, the recommendation of De Grandpré, the certificate of the surveyor, Pintado, & the concession or order of survey of the governor-general, De Lemos.

(Signed) THOS. E. EVERSHED.

Sworn to & subscribed before me this 17th March, A. D. 1873.

[SEAL.] (Signed) J. A. CHARBONNET,
Dy. Clk.

(Indorsed:) Andrew McMicken vs. United States. No. 26. Translations of Doc. A, &c. Filed March 26th, 1873. (Signed) J. A. Charbonnet, dy. clk.

16 Whereas by a warrant from his excellency Don Manuel Gayoso de Lemos, late governor-general of Louisiana & this province, directed to my predecessor, bearing date the 2d day of January, 1799, it was ordered to be surveyed for William Coleman four hundred & ten arpents in front in the place described in my certificate, dated 19th of December, 1798, as recognized by Governor Grandpré, in favor of the petitioner, the 22nd day of the same month. I therefore do authorize Ira C. Kneeland, whom I have lately appointed my deputy surveyor, to secure the survey agreeable to the tenor & meaning of the said original documents which will be presented to the said Kneeland by the interested party, a copy of the same being left in this office; he, the said deputy, observing likewise the written instructions received from me the first instant; & remembering them by the rules established in granting lands, it is understood that *is* the warrant is for a certain number of arpents in front, the depth ought to be forty arpents, or four hundred perches of Paris.

Done at Baton Rouge on the 26th day of February, 1806.

(Signed) VINCENTE SEBASN. PINTADO.

Recorded, land-office.

(Indorsed:) A². No. 114. Charles McMicken vs. The United States. Document annexed to supl. & amd. Petition filed Nov. 19th, 1846. Charles McMicken. R. & K. 19 Jan., 1825, D. 22. No. 26. Filed March 26th, 1873. (Signed) J. A. Charbonnet, dy. clk.

17 Know all men by these presents that I, William Coleman, of Wilkinson County, Mississippi Territory, for a valuable consideration to me in hand paid by Charles McMicken, jr., of bayou Sarah, parish of Feliciana & State of Louisiana, the receipt whereof I hereby acknowledge, hath granted, bargained, & sold, & by these presents do grant, bargain, & sell, unto Charles McMicken, junr., all my right, title, interest, claim, & demand to a certain Spanish grant or requet & order of survey, containing or calling for four hundred & ten arpents or acres in front, being & lying within the district of Feliciana, & now State of Louisiana, as will appear by the title appertaining thereto in the Spanish records, said grant being made in my favor by his excellency Manuel Gayoso de Lemos, late governor-general of Louisiana, bearing date the second day of January, one thousand seven hundred & ninety-nine, with all & every other title-paper appertaining or in anywise belonging thereto, with all advantages, hereditaments, & appurtenances whatsoever to the said messuage or tract of land held, as above mentioned, by said grant, belonging or in anywise appurtaining, and the reversion & reversion', remainder & remainders, rents, issues, & profits of the said premises, & of every part & parcel thereof, and all the estate, right, title, interest, claim, & demand whatsoever, of me, the said William Coleman, of, in, & to the said messuage or tract of land & premises, & every part thereof:

18 To have & to hold the said messuage or tract of land & all & singular other the premises held & claimed under the said grant & other title-papers, as above set forth, & every part & parcel thereof, with the appurtenances, unto the said Charles McMicken, jr., his heirs & assigns, to the only proper use & behoof of the said Charles McMicken, junr., his heirs and assigns forever. And I, the said William Coleman, for myself, my heirs, executors, & administrators, do convey & set over the said grant, messuage, or tract of land, with all its appurtenances, & every part thereof, against me, the said William Coleman, my heirs, executors, & administrators, & all & every person *person* whatsoever, unto the said Charles McMicken, junr., his heirs & assigns, shall and will warrant & forever defend by these presents.

In witness whereof I have hereunto set my hand & affixed my seal, this sixteenth day of September, in the year of our Lord one thousand eight hundred & fourteen.

(Signed) WM. COLEMAN. [SEAL.]

Attest:

(Signed) JOSEPH J. WILLIAMS.
(Signed) JOHN STARK.

MISSISSIPPI TERRITORY,
Wilkinson County:

19 Personally appeared William Coleman before me, the undersigned, one of the justices of the quorum of the county court of the county aforesaid, & acknowledged that he signed, sealed, & delivered the within deed to Charles McMicken, junr., for the uses & purposes therein mentioned.

Acknowledged before me at Woodville, in the county aforesaid, this the 16th day of September, A. D. 1814.

(Signed) W. REAGAN,
J. Q., W. Co.

By David Holmes, governor of the Mississippi Territory, to all who shall see these presents:

Be it known that William Reagan was, on the 16th day of September & still is, a justice of the quorum in & for the county of Wilkinson in said Territory, & that full faith & credit are due to all his acts, deeds, attestations, & certificates as such.

Given under my hand & the seal of the said Territory, at the town of Washington, this 24th day of September, 1814.

[SEAL.] (Signed) DAVID HOLMES.

LAND-OFFICE, ST. HELENA COURT-HOUSE.

I certify that the annexed petition to the governor-general, the order of survey thereon, the certificate of Vincente Pintado, his authorization to Mr. Ira C. Kneeland, and bill of sale from William Coleman to Charles McMicken, junr., are truly recorded in book B, No. 1, pages 364, 365, 366, 367, & 368, in this office.

December 26th, 1824.

(Signed) DAVID BRADFORD, *Clerk.*

(Endorsed:) B. Charles McMicken, R. & K. 19 Jan., 1825. D. 22. Filed 10 June, 1829. (Signed) A. Winthrop, clk. No. 114. Charles McMicken vs. United States. Document C, annexed to supl. & amd. petition. Filed Nov. 19th, 1846. No. 26. Filed March 26th, '73. (Signed) J. A. Charbonnet, dy. clk.

To the commissioners of the land-office at St. Helena Court-House:

GENTLEMEN: Please take notice that I claim sixteen thousand four hundred arpen's in the parish of St. Helena, in virtue of the documents herewith, being an order of survey, dated the 2nd day of January, 1799, from Manuel Gayoso de Lemos in favor of William Coleman for the same, & by said Coleman conveyed to me.

December 26th, 1824.

(Signed) CHARLES McMICKEN.

LAND-OFFICE, ST. HELENA.

I certify the above to be truly recorded in book B, No. 1, p. 364, in this office.

Dec. 26th, 1824.

(Signed) DAVID BRADFORD, *Clerk.*

LAND-OFFICE, ST. HELENA COURT-HOUSE.

I certify the within to be truly recorded in book B, No. 1, p. 364, in this office.

Dec. 26, 1824.

(Signed) DAVID BRADFORD, *Clerk.*

(Endorsed:) C. No. 14. Charles McMicken vs. The United States. Charles McMicken, R. & K. 19 Jan., 1825. D. 22. Document annexed to supl. & amd. petition. Filed Nov. 19th, 1046. No. 26. Filed March 26th, '73. (Signed) J. A. Charbonnet, dy. clk.

21 Pleas at Cincinnatti, in the county of Hamilton, & State of Ohio, of the Hamilton County probate court, at a session thereof held at the place aforesaid, on the 10th day of *of* April, in the year of our Lord one thousand eight hundred & fifty-eight, before the honorable George H. Helton, sole judge of said court.

THE STATE OF OHIO,
Hamilton County, ss:

Be it remembered, that on the first day of April, in the year of our Lord one thousand eight hundred & fifty-eight, the last will & testament of Charles McMicken, late of this county, deceased, was presented to the court for probate, closed in the words and figures following, to wit:

I, Charles McMicken, a native of the county of Bucks, in the State of Pennsylvania, now residing in the city of Cincinnatti, and State of Ohio, being in good health & of sound & disposing mind & memory, do for the disposition of all my worldly property, of every description, make this my last will & testament, in manner & form following, to wit:

First, declaring that I have never been married, & that I have no heirs in the ascending line now living, I direct that immediately after my decease, an inventory, under oath or affirmation, shall be made by a notary public, assisted by two or more persons, whom my exec-
22 utors hereinafter named, may appoint, of all my real & personal estate wherever situated.

I. I give & devise to Charles M. Carr, & Andrew McMicken, & to the survivor of them, his executors & administrators, all my real estate in Clinton County, Illinois, & St. Charles County, Missouri, in trust, nevertheless, for the use & benefit of the children of the said Charles M. Carr, & of Mary Carr, (who intermarried with Henry Lear, who is now deceased,) to be divided between the said children & their heirs, share & share alike, when the last child shall have attained the age of twenty-one years; that is to say, the said lands shall be divided by the said children into parts of equal value, & each child shall chose his or her respective portion by lot, but if the whole or any portion of the said land cannot be equally divided, or the said children should fail to agree upon a division, then such portion which cannot be divided, or upon a division of which the said children [C. McMicken fail,] fail to agree, I direct, shall be sold by the said trustees, who shall divide the proceeds thereof equally among the said children or their heirs. The issue of any child or children of the said Charles M. Carr, or of his sister the said Mary Carr, or any grandchild shall take, by representation of their parents respectively, such share of the said lands or of the proceeds thereof as the said child would have been entitled
23 to receive had he or she been living at the time of the division or sale of the said estate. This devise, however, shall not enure to the benefit of such child or children of said Charles M. Carr, or his said sister Mary, who may hereafter receive a deed or deeds from me for any portion of said lands.

II. I give & devise unto William Crossman & Freeman G. Carey, & to the survivor of them, his executors & administrators, all that plantation situated in Miami Township, county of Hamilton, & State of Ohio, (on which my sister Elizabeth, the widow of William Randall, deceased, now resides,) containing about two hundred & twenty acres. In trust, nevertheless, to permit my sister, the said Elizabeth, to use, occupy, & enjoy the same during her life, and at her death I give & devise the

Acknowledged before me at Woodville, in the county aforesaid, this the 16th day of September, A. D. 1814.

(Signed) W. REAGAN,
J. Q., W. Co.

By David Holmes, governor of the Mississippi Territory, to all who shall see these presents:

Be it known that William Reagan was, on the 16th day of September & still is, a justice of the quorum in & for the county of Wilkinson in said Territory, & that full faith & credit are due to all his acts, deeds, attestations, & certificates as such.

Given under my hand & the seal of the said Territory, at the town of Washington, this 24th day of September, 1814.

[SEAL.] (Signed) DAVID HOLMES.

LAND-OFFICE, ST. HELENA COURT-HOUSE.

I certify that the annexed petition to the governor-general, the order of survey thereon, the certificate of Vincente Pintado, his authorization to Mr. Ira C. Kneeland, and bill of sale from William Coleman to Charles McMicken, junr., are truly recorded in book B, No. 1, pages 364, 365, 366, 367, & 368, in this office.

December 26th, 1824.

(Signed) DAVID BRADFORD, *Clerk.*

(Endorsed:) B. Charles McMicken, R. & K. 19 Jan., 1825. D. 22. Filed 10 June, 1829. (Signed) A. Winthrop, clk. No. 114. Charles McMicken vs. United States. Document C, annexed to supl. & amd. petition. Filed Nov. 19th, 1846. No. 26. Filed March 26th, '73. (Signed) J. A. Charbonnet, dy. clk.

To the commissioners of the land-office at St. Helena Court-House:

GENTLEMEN: Please take notice that I claim sixteen thousand four hundred arpen's in the parish of St. Helena, in virtue of the documents herewith, being an order of survey, dated the 2nd day of January, 1799, from Manuel Gayoso de Lemos in favor of William Coleman for the same, & by said Coleman conveyed to me.

December 26th, 1824.

(Signed) CHARLES McMICKEN.

LAND-OFFICE, ST. HELENA.

I certify the above to be truly recorded in book B, No. 1, p. 364, in this office.

Dec. 26th, 1824.

(Signed) DAVID BRADFORD, *Clerk.*

LAND-OFFICE, ST. HELENA COURT-HOUSE.

I certify the within to be truly recorded in book B, No. 1, p. 364, in this office.

Dec. 26, 1824.

(Signed) DAVID BRADFORD, *Clerk.*

(Endorsed:) C. No. 14. Charles McMicken vs. The United States. Charles McMicken, R. & K. 19 Jan., 1825. D. 22. Document annexed to supl. & amd. petition. Filed Nov. 19th, 1046. No. 26. Filed March 26th, '73. (Signed) J. A. Charbonnet, dy. clk.

21 Pleas at Cincinnatti, in the county of Hamilton, & State of Ohio, of the Hamilton County probate court, at a session thereof held at the place aforesaid, on the 10th day of *of* April, in the year of our Lord one thousand eight hundred & fifty-eight, before the honorable George H. Helton, sole judge of said court.

THE STATE OF OHIO,
Hamilton County, ss:

Be it remembered, that on the first day of April, in the year of our Lord one thousand eight hundred & fifty-eight, the last will & testament of Charles McMicken, late of this county, deceased, was presented to the court for probate, closed in the words and figures following, to wit:

I, Charles McMicken, a native of the county of Bucks, in the State of Pennsylvania, now residing in the city of Cincinnatti, and State of Ohio, being in good health & of sound & disposing mind & memory, do for the disposition of all my worldly property, of every description, make this my last will & testament, in manner & form following, to wit:

First, declaring that I have never been married, & that I have no heirs in the ascending line now living, I direct that immediately after my decease, an inventory, under oath or affirmation, shall be made by a notary public, assisted by two or more persons, whom my exec-
22 utors hereinafter named, may appoint, of all my real & personal estate wherever situated.

I. I give & devise to Charles M. Carr, & Andrew McMicken, & to the survivor of them, his executors & administrators, all my real estate in Clinton County, Illinois, & St. Charles County, Missouri, in trust, nevertheless, for the use & benefit of the children of the said Charles M. Carr, & of Mary Carr, (who intermarried with Henry Lear, who is now deceased,) to be divided between the said children & their heirs, share & share alike, when the last child shall have attained the age of twenty-one years; that is to say, the said lands shall be divided by the said children into parts of equal value, & each child shall chose his or her respective portion by lot, but if the whole or any portion of the said land cannot be equally divided, or the said children should fail to agree upon a division, then such portion which cannot be divided, or upon a division of which the said children [C. McMicken fail,] fail to agree, I direct, shall be sold by the said trustees, who shall divide the proceeds thereof equally among the said children or their heirs. The issue of any child or children of the said Charles M. Carr, or of his sister the said Mary Carr, or any grandchild shall take, by representation of their parents respectively, such share of the said lands or of the proceeds thereof as the said child would have been entitled
23 to receive had he or she been living at the time of the division or sale of the said estate. This devise, however, shall not enure to the benefit of such child or children of said Charles M. Carr, or his said sister Mary, who may hereafter receive a deed or deeds from me for any portion of said lands.

II. I give & devise unto William Crossman & Freeman G. Carey, & to the survivor of them, his executors & administrators, all that plantation situated in Miami Township, county of Hamilton, & State of Ohio, (on which my sister Elizabeth, the widow of William Randall, deceased, now resides,) containing about two hundred & twenty acres. In trust, nevertheless, to permit my sister, the said Elizabeth, to use, occupy, & enjoy the same during her life, and at her death I give & devise the

same to her children, Andrew Jackson Randall & Anna Maria Braley, & to their heirs, in fee, share & share alike. The said premises to be divided into parts of equal value, & each to receive a part.

III. I give & bequeath to Andrew McMicken & his heirs, two scholarships in the Farmers' College at Pleasant Hill, in Hamilton County, Ohio; to Anna Maria Braly & her heirs, two scholarships in the said Farmers' College, [C. McMicken and] and to Joseph L. Carr one scholarship in said Farmers' College.

IV. I give & devise to my nephew Andrew McMicken, in trust
24 for the use & benefit of his wife, Rachel Ann, during the term of her life, & after her death to their children, in fee, share & share alike. The issue, however, of any such child or children of the said Andrew now or hereafter born, to take by representation as I have already provided in item No. 1 (one) in the words of my devise to the children of Charles M. Carr aforesaid, & of his sister Mary Carr, the following real & personal estate, to wit:

1. All my real estate in the county of Madison, & State of Illinois, with power on the part of the said Andrew to sell at public or private sale any or all of the said land, & to convey the same to purchasers in fee, the proceeds of such sale to be invested in other real estate or in securities to be held for the use & benefit of the said Rachel Ann & the said children in trust, as aforesaid.

2. All that tract of land in the parish of West Feliciana, & in the State of Louisiana, in the Tunnica settlement, containing five hundred arpens, & known as the "Carradine Gore tract," & which was purchased at the sale of the estate of William Collins about the year eighteen hundred & forty.

3. All my lots & lands in the town of Bayou Sara, & other lands on Thompson's Creek, in the parish of West Feliciana, in the State of Louisiana. [C. McMicken; all.]

4. All that tract of land containing about two hundred & fifty arpens, situate in the parish of East Baton Rouge, on the Cypress Bayou,
25 about twelve miles north of the town of Baton Rouge, known as the James McGill tract.

5. All that tract of land in the State of Kentucky, on the Big Sandy River, containing about ten thousand acres, and known as the Benjamin Wyncook tract or patent, and which is now the subject of a suit in ejectment; reserving, however, if recovered, to the heirs of Joshua F. Doyle one-third of the net proceeds after the sale thereof & after the payment of all costs and charges and expenses.

6. All my land in the State of Texas, except the grants in the names of Adam Carraway & James Brown, which are hereinafter devised to Levi S. McMicken.

All the lands above devised to be sold and disposed of by said Andrew at his discretion.

7. All that lot of ground in Spring Grove Cemetery, near Cincinnatti, as a burial place for the family of my brother & sister & of my nephews & nieces & their descendants.

And, also, my pew, No. 75, in the Ninth Street Baptist church.

8. All debts now due me in Cincinnatti, New Orleans, or elsewhere, by judgment, bond, note, account, or otherwise.

All the rents, issues, & profits which at time of my death may be due me from the land above specifically devised to my said nephew, Andrew McMicken; my carriages, &c., horses, all my library & household
26 furniture of every description, & any other personal property not hereinafter [C. McMicken, specifically] specifically devised;

which said library, furniture & personal property shall be equally divided by the said Andrew with my niece Lissie McMicken.

9. I permit my nephew, the said Andrew McMicken, & my said niece, Lissie McMicken, if either see fit, to occupy free of rent, & for the period of five years after my decease, the house in which I now reside. This permission, however, shall not interfere with the objects of my devise hereinafter stated to the city of Cincinnatti as to the lot by which the said building is surrounded.

V. I give and devise unto Levis S. McMicken, of Polk County, State of Texas, & his heirs, all my right, title, & interest to two leagues & labors of *of* land originally granted to Adam Carraway & James Brown, & now in charge of General James Davis, of the same county, for the purpose of perfecting the title thereof, & which are devised to the said Levi subject to & chargeable with the provisions of my agreement with General Davis.

All the above devises & bequests shall be free from any deductions or proportioned judgements for, or on account of, any legacy or annuity with which I have charged my real or personal estate.

VI. I charge my real and personal estate with the payment, [C. McMicken, of] of the following legacies & annuities, which are to
27 be paid & discharged out of the rents, interests, & dividen's of the said estate free from every deduction whatever.

The said legacies shall be paid at the period when each legatee respectively shall attain the age of twenty-one years, & shall be paid to such legatee in person*ally*, & not through an agent or attorney, but any legacy shall be with'eld if, in the judgement of the corporate authorities of the said city of Cincinnatti, the person to whom it is given shall from habits of intemperance & dissipation be deemed unworthy to receive it, in which case such legacy shall be retained in the possession of the said authorities for at least the period of ten years; & if such legatee should at any time within that period reform, & become worthy to receive said legacy, then the same shall be paid, without interest. otherwise it shall be forfeited & fall into my residuary estate. And I hereby further direct that should any annuitant, for the reasons above stated, with respect to any legatee, be found unworthy to receive such annuity, the proceeds thereof shall be withheld by said authorities until such annuitant shall reform & become worthy to receive it, when it shall be paid, but without interest.

VII. 1. I give & bequeath to Andrew McMicken, in trust for the use & benefit of his wife & family during the life of the said Andrew, & not to be subject to any debts due by him now or hereafter contracted, the annuity or yearly sum of fifteen hundred dollars, payable semi-annually. This annuity shall be free from all claims of every nature
28 which my estate may have against the said Andrew, & in full satisfaction of any claims or demands which he may now have, if any such there are, or which he may hereafter have against my estate.

2. I give & bequeath unto the said Rachel Ann, the wife of [C. McMicken] my said nephew Andrew McMicken, the annuity or yearly sum of five hundred dollars, payable semi-annually during the term of her life, which shall commence to be paid to her on the death of her husband, should she survive him.

3rd. And unto Sarah, Andrew, & Joseph, the children of my said nephew Andrew McMicken, each the sum of two thousand dollars, & unto any other child or children which my nephew, the said Andrew, may have by his present or any future wife, each the sum of two thousand dollars.

VIII. I give & bequeath to my niece Lissie McMicken, now residing with me, the annuity or yearly sum of one thousand dollars, payable semi-annually during her life, free from the liabilities & engagements of any future husband, & for her sole & separate use & behoof. I also give to my said niece Lissie my large walnut bedstead, with the bedding in the room occupied by me. Should my said niece marry & have issue, I give & bequeath to every such child when it arrives at the age of twenty-one years the sum of two thousand dollars.

29 IX. 1. I give & bequeath unto Andrew Jackson Randall the sum of two thousand dollars, & his wife Mary the sum of one thousand dollars.

2. And unto the children of the said Andrew Jackson Randall each the sum of one thousand dollars, and to any other child or children of the said Andrew hereafter born, each the sum of one thousand dollars.

X. I give & bequeath unto Charles, the son of Maria Braly, the sum of two thousand dollars, & if any other child or children [C.McMicken of] of my niece the said Maria Braly, now or hereafter born, each the sum of one thousand dollars.

XI. I give & bequeath unto my niece Anna Maria Braly the annuity or yearly sum of five hundred dollars, to be paid semi-annually during her life, for her sole & separate use, free from the control or debts of her present or any future husband.

XII. I give & bequeath to Charles M. Carr the sum of two thousand dollars, & to his wife Hannah E. Carr the sum of one thousand dollars.

2. I give & bequeath to Joseph L. Carr, the son of the said Charles M. Carr, the sum of two thousand dollars; & to the brothers & sisters of the said Joseph, each the sum of one thousand dollars, and to any other child or children of the said Charles M. Carr hereafter born, each the sum of one thousand dollars.

30 XIII. I give & bequeath unto the children of Mary Carr, who intermarried with Henry Lear aforesaid, each the sum of one thousand dollars.

XIV. 1. I give & bequeath unto Charles McMicken Perin, the son of Mary McMicken, who was the wife of Franklin Perin, the sum of one thousand dollars, & if within the period of ten years after my decease, or within the period of ten years after his arrival at the age of twenty-one years, he shall procure the passage of a law authorizing him to assume the name of Charles McMicken, instead of Charles McMicken Perin, I then give & bequeath to him the further sum of five thousand dollars.

2. I give & bequeath unto Clyde & Mary Louisa Perin, [C. McMicken the] the sisters of the said Charles, each the sum of one thousand dollars.'

XV. I give & bequeath unto Mary Ann Revelle the annuity or yearly sum of one hundred dollars, payable semi-annually, during her life.

XVI. I give & bequeath unto Virginia McDowell the sum of three hundred dollars, & to Sarah her sister the sum of two hundred dollars; the said Virginia & Sarah being the children of Joseph & Sarah McDowell.

XVII. 1. I give and bequeath unto the following-named children of David McMicken, of Lycoming County, Pennsylvania, my second
31 cousin, that is to say, unto David Hays McMicken[& Sarah Elizabeth & Mary McMicken, each the sum of five hundred dollars.

2. Unto Margaret, a daughter of the said David McMicken, by his first wife, the sum of five hundred dollars.

3. Unto Ann, the daughter of John McMicken & granddaughter of said David McMicken, the sum of five hundred dollars.

4. Unto the two unmarried daughters of Jane, the widow of Charles McMicken, deceased, who was a brother of the said David McMicken, each the sum of five hundred dollars.

XVIII. I give & bequeath unto Mrs. Mary E. Randall of New Orleans, widow of Charles M. Randall, deceased, an annuity or yearly sum of two hundred dollars during her life, payable semi-annually. [C. McMicken, I.]

XIX. I give & bequeath unto Sarah Burson, of Trenton, New Jersey, formerly Sarah Dean, an early friend & much-esteemed school-fellow, an annuity or yearly sum of two hundred dollars during her life, payable semi-annually.

XX. I give & bequeath unto Charles McMicken, the son of William B. & Bethuli Cadwalader, now living in Trenton, New Jersey, who is the grandson of Mrs. Sarah Burson, who gave him that name, the sum of two thousand dollars.

XXI. 1. I give & bequeath unto Wirtz McMicken, residing in
32 the city of Philadelphia, formerly Wirtz McMicken Johnson, but whose name was changed by an act of the assembly of Pennsylvania, an annuity or yearly sum of five hundred dollars, payable semi-annually, during his life. And in case he should have any legal issue, I give to each child when it arrives at the age of twenty-one years the sum of one thousand dollars.

2. I further give & bequeath to Sarah, the mother of the said Wirtz McMicken, an annuity or yearly sum of two hundred dollars, payable semi-annually, during her life.

XXII. I give & bequeath to Mrs. Kavanaugh, wife of Bishop Kavanaugh, residing in the town of Versailles, State of Kentucky, the sum of five hundred dollars.

XXIII. I give & bequeath to Charles McMicken Segur, the son of Doctor Segur, of Cincinnatti, the sum of one thousand dollars, [C. McMicken, and] and to Elizabeth, the daughter of the said Doctor Segur, the sum of five hundred dollars.

XXIV. I give & bequeath unto Mary, the daughter of Andrew McMicken, of Philadelphia, the sum of five hundred dollars; & to her sisters Josephine & Virginia, each two hundred & fifty dollars.

XXV. I give & bequeath unto my sister, the said Elizabeth Randall, an annuity or yearly sum of two hundred dollars, payable semi-annually, during her life.

33 XXVI. Having been born on the twenty-third day of November, anno Domini one thousand seven hundred & eighty-two, I direct that the first payment of the above annuities shall be made on the twenty-third day of November, after my decease, being the portion of such annuity which shall have accrued between the period of my decease & the said twenty-third of November, whether the same be more or less than six months. And the said payments shall be made semi-annually thereafter on the twenty-third days of May & November.

XXVII. All of the above recited annuities & legacies shall be paid in full, without any deduction whatever for or on account of any law or of any decision of the courts now or hereafter in force or pronounced. The annuities shall be paid by the treasurer of the city of Cincinnatti, or other proper officer of said city [C. McMicken appointed] appointed for the purpose; & those legacies which shall have become payable by my death shall be paid by my executors, but those dependent on the happening of any contingency shall be paid by the treasurer or other proper officer of the city aforesaid.

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XXVIII. If I should die owning any slaves, I direct my executors to

give them their freedom, & if they are disposed to remove & live in Liberia, Africa, I direct my executors to expend the sum of one hundred dollars upon each for the purpose of sending them to that country.

XXIX. Any monies which I have advanced to my said nephew
34 Charles M. Carr, or Henry Lear, who intermarried with my niece Mary Carr, as well as any claims, by note or otherwise, I may have against them; also any money advanced to, or any claim, by note or otherwise, I may have against my sister Elizabeth Randall, or her two children, Andrew Jackson Randall & Anna Maria Braly; or against my nephew Andrew McMicken, or my niece Lissie McMicken, up to this date, I hereby relinquish & forgive.

XXX. Should any of my kindred aforesaid or others to whom I have devised or bequeathed any real estate, legacy, or annuity attempt, by the institution of legal proceedings, to set aside this my last will, they shall, by so doing, forfeit any devise or bequest I have made them, & the devise or bequest so annulled & forfeited shall fall into my residuary estate & enure to the benefit of the city of Cincinnatti for the purposes hereinafter set forth. [C. McMicken.]

XXXI. Having long cherished the desire to found an institution where white boys & girls might be taught, not only a knowledge of their duties to their Creator and their fellow-men, but also receive the benefit of a sound, th'rough, and practical English education, & such as might fit them for the active duties of life as well as instruction in all the higher branches of knowledge, except denominational theology, to the
35 extent that the same are now or may hereafter be taught in any of the secular colleges or universities of the highest grade in the country, I feel grateful to God that through His kind providence I have been sufficiently favored to gratify the wish of my heart.

I therefore give, devise, & bequeath to the city of Cincinnatti, & to its successors, for the purpose of building, establishing, & maintaining, as soon as practicable after my decease, two colleges for the education of white boys & girls, all the following real & personal estate, in trust forever, to wit:

1. All that piece of land called the "Davenport Tract," situated in the parish of East Baton Rouge, on the river Mississippi, about fourteen miles below the town of Baton Rouge, in the State of Louisiana, being about fifteen arpens in front & eighty in depth, and containing about twelve hundred acres.

2. All my property in the city of New Orleans, and town & parish of Jefferson, in the State of Louisiana, which, as well as that called the "Davenport Tract," above devised, shall be sold by the said city as soon as it may be deemed prudent, & upon the most advantageous terms, at public or private sale, & the same, if sold at public sale, shall [C. McMicken be] be sold in the months of January or February, for which purpose the said city is empowered to make the necessary conveyances. The said land shall be sold upon the usual credits of
36 one to three or four years, with a payment in cash, on account of the purchase-money, of ten to twenty per cent.; the balance of the purchase-money shall bear interest from the day of sale at the highest rate of conventional interest, which interest shall be secured in the notes given as a part of the principal sum, & the notes, after becoming due, shall continue to bear the same rate of interest. The whole balance of the purchase-money shall be secured by a mortgage on the premises.

3. All that tract of land in Delhi Township, in the county of Hamilton & State of Ohio, containing one hundred & twenty-four acres & three-tenths of an acre.

And I hereby authorize the said city to lease or sell the same, & also to sell any other property hereafter acquired by me in the county of Hamilton & State of Ohio, or elsewhere, except (as hereafter particularly stated) real estate in the said city of Cincinnatti.

4. All my real estate in the city of Cincinnatti, subject, first, to the payment of the legacies & annuities with which it is charged, which, as I have directed, shall be paid out of the rents & profits derived from the said estate.

5. All my real estate & personal property which I may acquire after the date of this my will.

6. All my railroad bonds & railroad, insurance, & other stocks, all notes secured by mortgage [C. McMicken on] on property I may
37 hereafter sell, all monies on deposit in any bank, & dividends due at the time of my decease, and all rents due at my decease rom my estate devised to the said city.

7. All taxes, claims, &c., to which my estate devised to the said city may be subject at the time of my decease, shall be paid out of the rents of the said estate.

8. All surplus of funds at any time hereafter accruing beyond the amount necessary to maintain the said colleges, & all rents, dividends, & interest accruing between the period of my decease & that at which the said institutions shall go into operation, or any surplus which may at any time hereafter accrue beyond the expenses & requirements of the institutions, shall be judiciously invested for the benefit of the said institutions in real-estate or mortgage securities in the said city, or in good railroad or bank stocks, or railroad bonds.

9. All the rest of my real or personal estate not hereinbefore devised or given, as well as any legacy, &c., which from the death of any legatee, &c., or failure of any condition on which the same is given, may hereafter lapse.

XXXII. 1. None of the said real estate in the said city of Cincinnatti above devised to the said corporation, whether improved or unimproved, or which I may hereafter acquire in the said city, or which the said city may purchase for the benefit of the said colleges, shall at any
38 time be sold, but any building or buildings thereon shall be kept in repair from the revenues of my estate, [C. McMicken and] and I hereby authorize the corporate authorities of the said city, should they find it necessary or expedient, from delapidation, fire, or other cause, or for the purpose of securing the largest income, to take down any house or houses & to rebuild the same out of the income of my estate. And I further empower the said authorities to build upon any vacant lot, lots, or grounds I may possess, or which they may under the authority of my will hereafter purchase, & as there will be a considerable space upon the eastern boundary of the grounds devoted to the college for the boys, it would be a suitable & convenient place for erecting boarding-houses for the accommodation of students, from which a rental might be derived.

2. The college buildings shall be erected out of the rents & income of my real and personal estate, & on the premises on which I now reside in the city of Cincinnatti, (by me purchased from the administrators of Luman Watson, deceased,) & which shall be plain, but neat and substantial in their character, & so constructed that, in conformity with their architectural design, they, from time to time, be enlarged as the rents of the estate devised will allow & the ends of the institution may require.

39 The said buildings shall be erected on different parts of the

Signed at the foot of each and on this page, and sealed, published, & declared by the said Charles McMicken as & for his last will and testament, in the presence of us, who, in the presence of the testator and of each other, have subscribed our names.

EDW. ARMSTRONG,
WM. MCLEAN.
THOMAS S. FERNON.
W. C. PATTERSON.
WILLIAM WISTER.
JOHN JORDAN, Jr.

46 And on the day and in the year last aforesaid, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and fifty-eight, the court aforesaid made the following order herein, to wit:

In the matter of the last will & testament of Charles McMicken, deceased.

The last will and testament of Charles McMicken, late of this county, deceased, being this day presented to the court for probate, and it being suggested to the court that all the subscribing witnesses to said will reside in the city of Philadelphia & State of Pennsylvania, the court therefore orders that a commission, with the said will annexed, be issued to take the depositions of the subscribing witnesses to said will. And the court further orders that said commission be directed to George Junkin, jr., of the city of Philadelphia, State of Pen'sylvania, which is now accordingly done; & thereupon the following commission, with the said will annexed, was issued:

THE STATE OF OHIO,
Hamilton County, ss:

Probate court to George Junkin, jr., commissioner, &c., Philadelphia, Pa.:

Know ye that we, in confidence of your prudence and fidelity,
47 have appointed you, & by thes' presents do give to you full power & authority, to examine and take the depositions of Edw. Armstrong, Wm. McLean, W. C. Patterson, Thomas S. Fernon, Wm. Wister, & John Jordan, jr., all of the city of Philadelphia, State of Pen'sylvania, the subscribing witnesses to the last will & testament of Charles McMicken, late of the county of Hamilton & State of Ohio, deceased, now pending in our said probate court, which said will is hereto attached.

We therefore command you that at certain days & places, to be appointed by you, you cause the said Edw. Armstrong, Wm. McLean, Thomas S. Fernon, W. C. Patterson, Wm. Wister, and John Jordan, jr., to be brought before you, and then and there examine them, upon their corporal oaths or affirmations first taken before you, touching the due execution of the last will & testament of the said Charles McMicken, deceased; and that you reduce such examination to writing & return the same, together with this commission and the said last will & testament of the said Charles McMicken, deceased, hereto annexed, closed up, under your seal, into our said probate court, with all convenient despatch.

In testimony whereof I have hereunto set my hand & affixed the

seal of the said probate court, at Cincinnatti, this 2nd day of April, A. D. 1858.

[SEAL.] GEO. H. HILTON,
Probate Judge.

48 And afterwards, on the 10th day of April, in the year of our Lord, one thousand eight hundred & fifty-eight, the said commission, with the said will annexed, together with the affidavits of the subscribing witnesses to said will thereto attached, & the report of the said commissioner thereon endorsed, was returned to said probate court; which affidavits and reports are in the words & figures following, to wit:

SCHEDULE A.

STATE OF PEN'SYLVANIA,
City of Philadelphia, ss:

Probate of the will of Charles McMicken, late of Hamilton County, in the State of Ohio, deceased, presented the second (2nd) day of April, A. D. 1858, in the probate court of Hamilton County, in the State of Ohio:

Personally appeared before me, George Junkin, junior, a commissioner for that purpose, appointed by the probate court of Hamilton County, in the State of Ohio, and a commissioner appointed & duly commissioned by the governor of the State of Ohio to take the acknowledgment & proof of deeds, &c., & to administer oaths & affirmations, &c., in the said State of Pen'sylvania, to be used & recorded in the said State of Ohio, in my said city of Philadelphia, Edward Armstrong, esquire, one of the subscribing witnesses of the last
49 will & testament of the said Charles McMicken, deceased, which will is hereto annexed; who, being duly sworn according to law to speak the truth, the whole truth, and nothing but the truth in rela.ion to the execution of the said will, did depose & say that he, together with Wm. McLean, Thomas S. Fernon, W. C. Patterson, William Wister, and John Jordan, jr., the other subscribing witnesses thereto, was present at the making of the said will, and at the request of the deceased he & they subscribed their names to the said will as witnesses, in the presence of the deceased and of each other; that they saw the said Charles McMicken, deceased, sign & seal said will, and heard him acknowledege the same to be his last will and testament; that the said Charles McMicken was, at the time of making, signing, and sealing said will, of legal age and of sound and disposing mind and memory, and under no undue or unlawful restraint whatsoever.

EDW. ARMSTRONG.

Sworn and subscribed before me, the said commissioner, in the said city of Philadelphia, this seventh day of April, in the year of our Lord one thousand eight hundred and fifty-eight, (A. D. 1858.)

In witness whereof I have hereunto set my hand and official seal the day and year last aforesaid.

50 [L. S.] GEO. JUNKIN, JUNIOR,
Special Commissioner & Commissioner for Ohio.

Personally appeared before me, George Junkin, junior, a commissioner for that purpose, appointed by the probate court of Hamilton County, in the State of Ohio, and a commissioner appointed and duly commissioned by the governor of the State of Ohio to take the acknowledgment and proof of deeds, &c., & to administer oaths and affirma-

tions, &c., in the said State of Pen'sylvania, to be used and recorded in the State of Ohio, in my said city of Philadelphia, William McLean, esquire, one of the subscribing witness' of the last will and testament of the said Charles McMicken, deceased, which will is hereto annexed; who, being duly sworn according to law to speak the truth, the whole truth, & nothing but the truth in relation to the execution of the said will, did depose & say that he, together with Edward Armstrong, Thomas S. Fernon, W. C. Patterson, William Wister, & John Jordan, jr., the other subscribing witnesses thereto, was present at the making of the said will, & at the request of the deceased he & they subscribed their names to said will as witnesses, in the presence of the deceased and of each other; that they saw the said Charles McMicken,
51 deceased, sign & seal said will, & heard him acknowledge the same to be his last will and testament; that the said Charles McMicken was, at the time of making, signing, & sealing said will, of legal age & of sound & disposing mind & memory, & under no undue or unlawful restraint whatsoever.

WM. McLEAN.

Sworn & subscribed before me, the said commissioner, in the said city of Philadelphia, this seventh day of April, in the year of our Lord one thousand eight hundred and fifty-eight, (A. D. 1858.)

In witness whereof I have hereunto set my hand & official seal the day and year last aforesaid.

[SEAL.] GEO. JUNKINS, JR.,
Special Commissioner and Commissioner for Ohio.

Personally appeared before me, George Junkin, jr., a commissioner for that purpose, appointed by the probate court of Hamilton County, in the State of Ohio, and a commissioner appointed and duly commissioned by the governor of the State of Ohio to take the acknowledgment and proof of deeds, &c., and to administer oaths & affirmations, &c., in the said State of Pen'sylvania, to be used and recorded in the said State of Ohio, in my said city of Philadelphia, Thomas S. Fernon, esquire, of the subscribing witnesses of the last will & testament of the said Charles McMicken, deceased, which will is hereto annexed; who, being duly
52 sworn according to law to speak the truth, the whole truth, & nothing but the truth in relation to the execution of the said will, did depose & say that he, together with Edward Amstrong, William McLean, W. C. Patterson, William Wistor, & John Jordan, jr., the other subscribing witnesses thereto, was present at the making of the said will, and at the request of the deceased he & they subscribed their names to said will as witnesses, in the presence of the deceased & of each other; that they saw the said Charles McMicken, deceased, sign & seal said will & heard him acknowledge the same to be his last will & testament; that the said Charles McMicken was, at the time of making, signing, & sealing said will, of legal age & of sound & disposing mind & memory, & under no undue or unlawful restraint whatsoever.

THOMAS S. FERNON.

Sworn & subscribed before me, the said commissioner, in the city of Philadelphia, this 7th day of April, in the year of our Lord one thousand eight hundred & fifty-eight, (A. D. 1858.)

In witness whereof I have hereunto set my hand & seal the day & year last aforesaid.

[SEAL.] GEO. JUNKIN, JR.,
Special Commissioner & Commissioner for Ohio.

Personally appeared before me, George Junkin, junior, a commis-
53 sioner for that purpose, appointed by the probate court of Hamilton County, in the State of Ohio, & a commissioner appointed & duly commissioned by the governor of the State of Ohio to take the acknowledgment & proof of deeds, &c., & to administer oaths & affirmations, &c., in the State of Pennsylvania, to be used & recorded in the said State of Ohio, in my said city of Philadelphia, W. C. Patterson, esquire, one of the subscribing witnesses of the last will & testament of the said Charles McMicken, deceased, which will is hereto annexed, who, being duly sworn according to law to speak the truth, the whole truth, & nothing but the truth in relation to the execution of the said will, did depose & say that he, together with Edward Armstrong, William McLean, Thomas S. Fernon, William Wistor, & John Jordan, jr., the other subscribing witnesses thereto, were present at the making of the said will, & at the request of the deceased he & they subscribed their names to the said will as witnesses, in the presence of the deceased & of each other; that they saw the said Charles McMicken, deceased, sign & seal said will, & heard him acknowledge the same to be his last will & testament; that the said Charles McMicken was, at the time of making, signing, & sealing said will, of legal age, and of sound
54 and disposing mind and memory, and under no undue or unlawful restraint whatsoever.

W. C. PATTERSON.

Sworn and subscribed before me, the said commissioner, in the said city of Philadelphia, this eighth day of April, in the year of our Lord one thousand eight hundred & fifty-eight, (A. N. 1858.)

In witness whereof I have hereunto set my hand & official seal the day & year last aforesaid.

[SEAL.]

GEO. JUNKIN, JR.,
Special Commissioner & Commissioner for Ohio.

Personally appeared before me, George Junkin, junior, a commissioner for that purpose, appointed by the probate court of Hamilton County, in the State of Ohio, & a commissioner appointed and duly commissioned by the governor of the State of Ohio to take the acknowledgement & proof of deeds, &c., & to administer oaths & affirmations, &c., in the said State of Pennsylvania, to be used & recorded in the said State of Ohio, in my said city of Philadelphia, William Wister, esquire, one of the subscribing witnesses of the last will & testament of the said Charles McMicken, deceased, which will is hereto annexed, who, being duly sworn, according to law, to speak the truth, the whole
55 truth, and nothing but the truth, in relation to the execution of the said will, did depose and say that he, together with Edward Armstrong, William McLean, Thomas S. Fernon, W. C. Patterson & John Jordan, jr., the other subscribing witnesses thereto, was present at the making of said will, & at the request of the deceased he & they subscribed their names to said will, as witnesses, in the presence of the deceased & of each other; that they saw the said Charles McMicken, deceased, sign & seal said will, & heard him acknowledge the same to be his last will and testament; that the said Charles McMicken was, at the time of making, signing & sealing said will, of legal age, & of sound & disposing mind & memory, & under no undue or unlawful restraint whatsoever.

WILLIAM WISTER.

Sworn & subscribed before me, the said commissioner, in the said city of Philadelphia, this 7th day of April, in the year of our Lord one thousand eight hundred & fifty-eight, (A. D. 1858.)

In witness whereof I have hereunto set my hand & official seal the day & year last aforesaid.

[SEAL.] GEO. JUNKIN, JR.,
Special Commissioner & Commissioner for Ohio.

Personally appeared before me, George Junkin, junior, a commissioner for that purpose appointed by the probate court of Hamilton County, in the State of Ohio, & a commissioner appointed & duly commissioned
56 by the governor of the State of Ohio to take the acknowledgment & proof of deeds, &c., and to administer oaths and affirmations, &c., in the said State of Pennsylvania, to be used & recorded in the said State of Ohio, in my said city of Philadelphia, John Jordan, jr., esquire, one of the subscribing witnesses of the last will & testament of the said Charles McMicken, deceased, which will is hereto annexed, who, being duly affirmed, according to law, to speak the truth, the whole truth, and nothing but the truth, in relation to the execution of the said will, did depose & say that he, together with Edward Armstrong, William McLean, Thomas S. Fernon, W. C. Patterson, & William Wister, the other subscribing witnesses thereto, was present at the making of the said will, and at the request of the deceased he and they subscribed their names as witnesses to said will in the presence of the deceased and of each other; that they saw the said Charles McMicken, deceased, sign & seal said will, & heard him acknowledge the same to be his last will & testament; that the said Charles McMicken was, at the time of making, signing & sealing said will, of legal age & of sound & disposing mind & memory, & under no undue or unlawful restraint whatsoever.

JOHN JORDAN, JR.

57 Affirmed and subscribed before me, the said commissioner, in the said city of Philadelphia, this seventh day of April, in the year of our Lord one thousand eight hundred & fifty-eight, (A. D. 1858.)

In witness whereof I have hereunto set my hand & official seal the day and year last aforesaid.

[SEAL.] GEO. JUNKIN, JR.,
Special Commissioner & Commissioner for Ohio.

To the honorable George H. Hilton, probate judge of the probate court of Hamilton County, in the State of Ohio:

I, George Junkin, junior, the commissioner named in the within commission, make return, that I have performed the duties of the said appointment, as will fully appear by the schedule (A) hereunto annexed.

In witness whereof I have hereunto set my hand & affixed my official seal this eighth day of April, in the year of our Lord one thousand eight hundred & fifty-eight, (A. D. 1858.)

[SEAL.] GEO. JUNKIN, JR.,
Special Commissioner and Commissioner for the State of Ohio.

And afterwards, on the day & in the year first aforesaid, to wit, on the tenth day of April, in the year of our Lord one thousand eight hundred & fifty-eight, the court aforesaid made the following order herein, to wit,

58 In the matter of the last will & testament of Charles McMicken, dec'd.

The commission heretofore issued from this court, with the will of Charles McMicken, late of this county, deceased, thereto attached, to take the deposition of the subscribing witnesses to said will, was this day returned to this court with the testimony of Edward Armstrong, Wm. McLean, Thomas S. Fernon, W. C. Patterson, William Wister, & John Jordan, jr., the subscribing witnesses to said will, reduced to writing & thereto attached, all of which is now filed. And the court being satisfied that said will was duly attested & executed & that said testator at the time of executing the same was of full age & of sound mind & memory, & not under any restraint, the court admits the said will to probate, & orders the same, together with the testimony taken, to be recorded according to the statutes in such cases.

And afterwards, on the twentieth of April, in the year of our Lord one thousand eight hundred & fifty-eight, the court aforesaid made the following order herein, to wit:

In the matter of the estate of Charles McMicken, deceased.

On motion, & after careful consideration of the representations of the executors named in said will, & of other parties in interest, together with proofs & ex'ibits, the court requires the executors named in
59 said will, who may elect to act as such, to give separate bonds in the sum of one hundred & fifty thousand dollars each.

And afterwards, on the 27th day of April, in the year of our Lord one thousand eight hundred & fifty-eight, the court aforesaid made the following order herein, to wit:

In the matter of the estate of Charles McMicken, dec'd.

This day came in open court William Woodruff, one of the executors named in the last will & testament of Charles McMicken, late of this county, deceased, & tendered to the court his written declination to act as an executor of said will.

And afterwards, on the 29th day of April, in the year of our Lord one thousand eight hundred & fifty-eight, the court aforesaid made the following order herein, to wit:

In the matter of the estate of Charles McMicken, deceased.

This day came William M. F. Hewson, one of the executors named in the last will & testament of Charles McMicken, late of this county, deceased, & filed his bond as such executor, in the sum of one hundred & fifty thousand dollars, with William R. Morris and James C. Hall as sureties.

And afterwards, on the thirtieth day of April, in the year of our Lord one thousand eight hundred & fifty-eight, the court afore-
60 said made the following order herein, to wit:

In the matter of the estate of Charles McMicken, deceased.

This day came Freeman G. Cary, one of the executors named in the last will & testament of Charles McMicken, late of this county, deceased, and filed his bond in the sum of one hundred & fifty thousand dollars, with William Cary, Samuel F. Cary, F. Y. Vail, David Gray, Stephen F. Howard, T. B. Witherby, & S. J. Brown as sureties.

And also at the same time came William Crossman, one of the executors named in said will, & filed his separate bond in the sum of one hundred & fifty thousand dollars, with Ephraim Morgan, John K. Green, & James P. Kilbreth as sureties.

And afterwards, on the first day of May, in the year of our Lord one thousand eight hundred & fifty-eight, the court aforesaid made the following order herein, to wit:

In the matter of the estate of Charles McMicken, deceased.

On motion, the court now grants unto William Crossman, Freeman G. Cary, & William M. F. Hewson, three of the executors named in the last will & testament of Charles McMicken, late of this county, deceased, letters testamentary on the estate of said Charles McMicken, William Woodruff, one of the executors named in said will, having declined to act, & John C. Chenoweth & Andrew McMicken, the other executors named in said will, having neglected, after being duly cited, to appear & elect to act & give bonds as such executors, the court now approves the separate bond filed in the office of this court on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred & fifty-eight, by said William M. F. Hewson, in the sum of one hundred & fifty thousand dollars, with William R. Morris & James C. Hall as his sureties; also, the separate bonds of William Crossman and Freeman G. Cary, in the same sums, filed the thirtieth day of April, in the year of our Lord one thousand eight hundred & fifty-eight, with Ephraim Morgan, John K. Greene, and James P. Kilbreth as sureties for William Crossman; and William Cary, Samuel F. Cary, F. Y. Vail, David Gray, Stephen F. Howard, T. B. Witherby, and S. J. Brown as sureties for Freeman G. Cary.

61

And the court appoints to appraise the real and personal estate of the said Charles McMicken, deceased, Timothy S. Goodman, William M. Shiras, & John D. Caldwell.

Letters issued.

Whereas Charles McMicken, late of the county of Hamilton & State of Ohio, died, leaving a last will & testament, (a true copy whereof is hereto annexed,) which said will & testament has been duly proven & admitted to *to* record by our probate court, within & for the county aforesaid, on the 10th day of April, A. D. 1858:

62

Know ye, therefore, that the said probate court has granted unto Freeman G. Cary, Wm. Crossman, & William M. F. Hewson, the executors in said will & testament named, letters testamentary therein; hereby granting to said executors, all & singular, the power necessary, & by law required, to enable them to take an inventory of, collect, sue for, & recover, all & singular, the goods, chattels, & credits of the said deceased; & out of the same, or such part thereof as shall come to their hands, the debts of the said deceased, & the legacies in said will named

to pay & discharge according to law & to the will of said testator, and the same fully to administer in all things as required by law.

And the court have appointed Timothy S. Goodman, William M. Shiras, and John D. Caldwell to appraise, on oath or affirmation, all and singular, the goods, chattels, and credits of the said deceased,
63 together with the real estate of said deceased.

In testimony whereof I have hereunto set my hand & affixed the seal of the said probate court, at Cincinnati, this first day of May, in the year of our Lord one thousand eight hundred & fifty-eight.

[L. S.] GEO. H. HILTON,
Probate Judge.

Know all men by these presents that we, Freeman G. Cary & Wm. Cary, Samuel F. Cary, Franklin G. Vail, David Gray, Stephen F. Howard, Thomas B. Witherby, & Samuel J. Brown, of the county of Hamilton & State of Ohio, are held & firmly bound unto the State of Ohio in the just & full sum of one hundred & fifty thousand ($150,000.00) dollars, for the payment whereof, well & truly to be made, we bind ourselves & each of us, our heirs, executors, & administrators, & each of them, firmly by these presents, sealed with our seals, & dated at Cincinnati this thirtieth day of April, A. D. eighteen hundred & fifty-eight.

Whereas Charles McMicken, late of said county of Hamilton, deceased, made his last will and testament, which has been duly proven and admitted to record by the probate court in & for the said county, on the tenth day of April, A. D. 1858; and whereas the said
64 Freeman G. Cary is appointed an executor in said will named:

Now the condition of this obligation is such that if the said Freeman G. Cary shall pay all the debts & legacies of the said Charles McMicken, testator, according to law, and the will of said deceased, and shall administer, according to law & to the will of the testator, all his goods, chattels, rights, & credits, and proceeds of all his real estate, that they may be sold for the payment of his debts or legacies, which shall at any time come to the possession of the executor or to the possession of any other person for him, and shall render, upon oath, a just & true account of his administration within eighteen months, & at any other times when required by the court or the law, then this obligation to be void; otherwise to remain in full force & virtue.

F. G. CARY.	[SEAL.]
WM. CARY.	[SEAL.]
SAML. F. CARY.	[SEAL.]
F. Y. VAIL.	[SEAL.]
DAVID GRAY.	[SEAL.]
STEPHEN F. HOWARD.	[SEAL.]
T. B. WITHERBY.	[SEAL.]
S. J. BROWN.	[SEAL.]

Signed, sealed, & delivered in the presence of—
GEO. H. HILTON.

65 Know all men by these presents that William Crossman & Ephraim Morgan, John K. Green & James P. Kilbreth, of the county of Hamilton & State of Ohio, are held & firmly bound unto the State of Ohio in the just & full sum of one hundred & fifty thousand ($150,000.00) dollars, for the payment whereof, well & truly to be made, we bind ourselves & each of us, our heirs, executors, & administrators, & each of them, firmly by these presents, sealed with our seals, & dated at Cincinnati, this thirtieth day of April, A. D. 1858.

Whereas Charles McMicken, late of said county of Hamilton, deceased, made his last will & testament, which has been duly proven & admitted to record by the probate court in & for the said county, on the tenth day of April, A. D. 1858; and whereas the said William Crossman is appointed an executor in said will named:

Now the condition of this obligation is such, that if the said William Crossman shall pay all the debts & legacies of the said Charles McMicken, testator, according to law & the will of said deceased, and shall administer, according to law & to the will of the testator, all his goods, chattels, rights, & credits, & proceeds of all his real estate that may be sold for the payment of his debts or legacies, which shall
66 at any time come to the possession of the executor, or to the possession of any other person for him, & shall render, upon oath, a just & true account of his administration within eighte'n months, & at any other times when required by the court or the law, then this obligation to be void; otherwise to remain in full force & virtue.

WILLIAM CROSSMAN. [SEAL.]
EPHRAIM MORGAN. [SEAL.]
JOHN K. GREEN. [SEAL.]
JAS. P. KILBRETH. [SEAL.]

Signed, sealed, & delivered in the presence of—
GEO. H. HILTON.

Know all men by these presents that we, William M. F. Hewson, William R. Morris, & James C. Hall, of the county of Hamilton and State of Ohio, are held & firmly bound unto the State of Ohio in the just & full sum of one hundred & fifty thousand dollars, ($150,000.00,) for the payment whereof, well & truly to be made, we bind ourselves & each of us, our heirs, executors, & administrators, and each of them, firmly these presents, sealed with our seals, & dated at Cincinnati, this twenty-ninth day of April, A. D. 1858.

Whereas Charles McMicken, late of said county of Hamilton, deceased, made his last will & testament, which has been duly
67 proven & admitted to record by the probate court in & for the said county, on the tenth day of April, A. D. 1858; and whereas the said William M. F. Hewson is appointed an executor in said will named:

Now the condition of this obligation is such that if the said William M. F. Hewson shall pay all the debts and legacies of the said Charles McMicken, testator, according to law & the will of said deceased, and shall administer, according to law and to the will of the testator, all his goods, chattels, rights, and credits, and proceeds of all his real estate that may be sold for the payment of his debts or legacies, which shall at any time come to the possession of the executor or to the possession of any other person for him, and shall render, upon oath, a just & true account of his administration within eighteen months, and at any other times when required by the court or the law, then this obligation to be void; otherwise to remain in full force & virtue.

W. M. F. HEWSON. [SEAL.]
WM. R. MORRIS. [SEAL.]
JAMES C. HALL. [SEAL.]

Signed, sealed, & delivered in presence of—
G. H. HILTON.

68 *Probate court.*

THE STATE OF OHIO,
Hamilton County, ss:

I. George H. Hilton, sole judge & ex-officio clerk of the probate court within & for the county aforesaid, do hereby certify the foregoing to be a true transcript of the record of the last will & testament of Charles McMicken, late of said county, deceased, together with all the orders & proceedings of said court in the matter of the probate of said will & the granting of letters testamentary on said estate and of the letters testamentary granted & bonds taken by said court, as the same appear from the records and files of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Cincinnatti this 25th day of May, A. D. 1858.

[SEAL.] (Signed) GEO. H. HILTON,
Probate Judge & ex-officio Clerk.

69 THE STATE OF OHIO,
Hamilton County, ss:

I, George H. Hilton, sole judge of the probate court within and for said county, hereby certify that the signature attached to the above certificate purporting to be that of George H. Hilton, is his genuine signature; & that he was at the time thereof ex-officio clerk of said probate court, & as such full faith and credit are due his acts.

Witness my hand & the seal of said court, at Cincinnatti, this 25th day of May, A. D. 1858.

[SEAL.] (Signed) GEO. H. HILTON,
Probate Judge.

(Endorsed:) E. Will of Charles McMicken. No. 26. Filed March 26th, 1873. (Signed) J. A. Charbonnet, d'y clk.

WILLIAM J. MCCULLOH deposes:

That he came to Louisiana in Dec., 1847, & went to work as deputy surveyor early in January, 1848, & was thereafter so engaged until he became surveyor-general of the United States for the district of
70 Louisiana, on the 1st July, 1853, & that he continued in said office until the secession of Louisiana on 26th January, 1861. That as deputy surveyor & U. S. surveyor-general he critically examined many surveys of Spanish claims or grants by Carlos Trudeau & Vincent Sebastian Pintado, who, during the latter part of the Spanish government in Louisiana, & for many years, were the official government surveyors, & continued to be so up to the period of the cession of Louisiana to the United States. That it is known to deponent from authentic documents that said Pintado continued after that time to be the government surveyor of the Spanish provinces of West Florida, & subsequently went with the Spanish intendant, Morales, to Pensacola. That although deponent was not born when Laveau Trudeau & Pintado died, he has seen & examined hundreds of original surveys & proces verbal of surveys by these surveyors of claims which have been confirmed by the United States & has therefore become acquainted with their signatures & handwriting & would swear to the latter even if unsigned.

Deponent says it is known that both the said Carlos Trudeau, who often signed his name Laveau Trudeau, & Carlos Laveau Trudeau, & the said Vincent Sebastian Pintado each kept records & copies

of his operations & plants. That the records of Trudeau were in 1817, after his death, bought by the State of Louisiana & sent to the
71 Gen'l Land-Office at Washington, with a proposition to sell them to the United States.

That a clerk or draughtsman in that office, with whom the deponent became acquainted, made an index of these papers, which he has seen in the Gen'l Land-Office, & besides marked each bundle & plan with his initials; that the Government not having purchased them they were brought back to Louisiana, & are now deposited in the office of the register of the State land-office, having been delivered to him by the administrator of Louis Bringier, former State surveyor-general, whose office had been abolished by special act of the legislature.

It is well known in Louisiana that Pintado's widow, who was a native of the county of Acadia, was in possession of his records, which were in bound volumes of plans & process verbal of surveys, within the limits of what was claimed by Spain as West Florida; that afterwards said volumes of a person by the name of Charles Bishop, & were sent to Washington for sale; that in the Gen'l Land-Office an index was made which deponent saw there in the spring of 1859; that said index appeared to have been made by the same clerk of the Gen'l Land-Office, W. S. Steiger, who had made the list of Carlos Trudeau's papers.

That some time before the war these records were put into the hands of deponent, Mr. Louis Janin, who desired to propose their sale
72 to the State of Louisiana; that they remained long in his possession & some years ago were delivered by deponent to John Livingston, esq., of this city, by direction of Mr. Janin, who said that Livingston represented the owner of these records, & deponent saw these records in the possession of said John Livingston about two months ago. These Pintado papers are in a state of perfect preservation, & no doubt ever was or could be entertained of the authenticity of anything contained in them. There is an original index of these records, which was copied in Washington, besides an index which was made in Spanish, of every volume.

Deponent further says that he is acquainted with the contents of the act of Congress of June 22nd, 1860, under which suits had been brought in this hon. court, under sales made by Morales, intendant of the Spanish province of West Florida.

That under the requirements of said act of Congress, plans had to be prepared in each of said suits showing the boundaries of the Spanish claims, their exact locality, & what part of the surveys of the United States is covered by said Spanish claims. That in one of said cases, that of Joseph Reynes, such a plan was filed, which was approved by depo-
nent while suveyor-general and had been prepared under his direc-
73 tion. That in said plan, which was filed in said case, the Spanish claim is represented by red lines, according to the scale of the United States surveys, & within the boundaries of said red lines are represented by black lines the surveys of the United States of the same lands.

That in another of this class of cases, that of the heirs of Juan Lynd, the plans filed by the plaintiff were also prepared under the direction of the deponent, he being then out of office but acting as an expert & private surveyor; that these Lynd plans were made in the same manner as the plans in the Reynes case.

Deponent further says, in the other cases under Morales' sales, instituted by Mr. Louis Janin, the plans filed by plaintiff in accordance with said act of 22 June, 1860, were drawn by Mr. Henri Gascon, & deponent

has seen a number of them. Mr. Gascon followed exactly the course adopted by deponent in the Reynes case, which is indeed the only one that could satisfy the requirements of the act of Congress of June 22nd, 1860. Deponent does not doubt the accuracy of the plans made by Mr. Gascon, who was first employed in the surveyor-general's office by deponent when surveyor-general in 1857, & remained in that office until it was discontinued, after the secession of Louisiana. Since the
74 re-opening of the surveyor-general's office for Louisiana, now located at New Orleans, was again employed in that office, on deponent's recommendation, & is now the chief clerk thereof. During deponent's acquaintance with him he has found him intelligent, industrious, conscientious, & entirely reliable. By his connection with that office before & since the war, Mr. Gascon has become familiar with its archives & business. He could, therefore, have no difficulty in preparing the plans in the suits for Intendant Morales' sales. In most if not in all of these cases, the original plans & proces-verbal of surveys, accompanying the titles, are filed in the records of the suits, or copies thereof prepared by Pintado from his own records, which he had taken with him to Pensacola, as in the case in Trudeau's suit, under Delassize's title. The Pintado records are the same which are mentioned in the beginning of this deposition & now believed to be in possession of John Livingston, esq., & were long in possession of deponent, when Mr. Gascon had free access to them, as he had to the original titles & plans under the control of Mr. Louis Janin, the counsel of plaintiffs.

75 Deponent does not know of any discrepancy between the original plan & proces-verbal of survey filed by plaintiffs & the copies thereof in Pintado's record, & does not believe that any exists. Trudeau & Pintado were industrious, accurate, & thoroughly competent officers. Pintado's records are contained in fifteen bound volumes.

Trudeau did not make surveys in West Florida after 1804; so that most of the surveys in the cases alluded to were executed by Pintado. The proces-verbal of the surveys, or description of the boundaries of the lands surveyed by Trudeau & Pintado, are so detailed that, even without seeing the original plans, a person as competent as Mr. Gascon could locate these claims. One claim (that of Manuel Lauzos) is described as being bounded on the north by the line between the American & Spanish dominions, to wit, the thirty-first degree of north latitude, & as having its western boundary at a fixed distance from the Mississippi River, & then the length & direction of the side lines are given.

Another claim is then described as being bounded on the north by Manuel Lauzos; another as being bounded by it to the west, &, together with their surrounding calls, their locality & shape could not be misapprehended.

76 Frequently natural boundaries are given—such as the affluence of streams, as the distance & direction from the point of confluence.

Deponent further says that most of the indices in the aforementioned fifteen volumes of Pintado's records he recognizes to be in the writing of a man named Bayliss, who was a clerk in the office of the register and receiver at Greensburg, La., who were acting as a board of commissioners; that although these records were submitted only to obtain recognition of the Morales sales, they were actually used to establish the lines of other claims in & around such sales, so as by connection therewith to identify them, thus incidentally, if not directly, recognizing the boundaries of the lands embraced by Morales' sale.

Deponent does not believe that there is any difference between the location of the Morales sales herein spoken of, as laid down by the Spanish surveyor, & in the plans in evidence, drawn by Mr. H'nri Gascon, unless it be in the banks of the larger streams, which vary, & may have been different when the United States surveys were made
77 from what they were at the time of the Spanish surveys. The banks of the smaller streams change very little, & hence are more reliable initial-points.

(Signed) WM. J. McCULLOH.

Sworn to & subscribed before me this 30 Jan., '72.

(Signed) J. A. CHARBONNET,
Dy. Clk.

CLERK'S OFFICE.

I certify that the foregoing is a true & correct copy of the original affidavit of Wm. J. McCulloh on file & of record in the matter of Mrs. F. E. Trudeau & husband vs. The U. S., No. 12 of the docket of the new land docket.

New Orleans, May 15th, 1873.

[SEAL.] (Signed) J. A. CHARBONNET,
Dy. Clk.

(Endorsed:) 26. New land docket dist. ct. U. S. Andrew McMicken vs. United States. Certified copy of affidavit of Wm. J. McCulloh. Filed May 16, '73. (Signed) J. A. Charbonnet, dy. clk.

[Here comes Plan D.]

78 HENRY GASCON, being duly sworn, doth depose & say:

That for several years he has been the chief clerk in the office of the surveyor-general of Louisiana, & is familiar with the duties of a draughtsman & able to protract maps & plans from field-notes of survey, or to lay down & represent on paper any tract of land which, though not actually surveyed on the ground, is so described by natural boundaries, courses & distances, with reference to any known and fixed initial point, as would render it capable of location.

That at the request of the plaintiff in the suit of Andrew McMicken vs. The United States, No. 26, he has drawn or prepared the map marked "F," filed in said suit, which truly represents those portions of townships 1, 2, & 3 south, of range 7 east, in the late Greensburg district, Louisiana, which are embraced within the boundaries of the alleged grant or concession to William Coleman, sued upon in said suit. That said boundaries of said grant are represented on the said plan by the deep red lines A, B, C, D, E, F, & G, on the north, west, & south, & by the Tangipahoa River on the east. That deponent, after
79 making true copies of such portions of said townships (in one connected plan) as conflicted with said grant, proceeded to lay down and protract the artificial boundaries in the manner following: Having the muniments of title sued on in this suit before him, he adopted the initial point A, being the intersection of the main channel of the river Tangipahoa with 31st degree of north latitude, or the ancient line of demarcation between West Florida & the United States, & now the line between Mississippi & Louisiana, & identical with the north boundary of township 1 south, of range 7 east; he then protracted the distance of 40 arpents (equal to 116.36 chains) westward from the ini-

tial point A, and along said line of demarcation to the point B, giving the grant 40 arpents in depth, as called for. He then protracted the distance of 410 arpen's (equal to 1193.60 chains) southward from said line of demarcation, on a course at right angles thereto, which said distance of 410 arpen's is represented by the letter G. That he then protracted the south line of said grant, F G, by setting off 40 arpen's due west from G, giving the depth called for.

That having thus established the upper & lower side lines of said grant, according to the calls in the title-papers, he drew the back
80 line or western boundary by protracting the straight lines B C, C D, D E, & E F, connecting the said side lines, & at the distance of 40 arpen's from the general course of the river Tangipahoa. That such protraction is in strict conformity with the calls of the titles sued on, & the expressions therein contained of natural & artificial boundaries, courses, & distances, & initial points. That with said calls any competent surveyor could readily survey & locate the grant, & that from his knowledge of the surveys of such grants by Trudeau & Pintado, in West Florida, their plans & procés verbals of surveys, he does not hesitate to say that, had the grant to Coleman been surveyed by either of them, such survey would not have differed materially, if at all, from the plan made by deponent.

That the figures in red represent the acres of the private claims or donations & the divisions & subdivisions of the public lands of the United States within the protracted limits of the grant to Coleman, & that the figures in black represent such portions of such private claims and subdivisions of public lands as are made fractional by the lines of the grant to Coleman, and that said fractional areas are truly cal-
81 culated by him, the deponent, & that said areas expressed in red are truly copied from the approved township maps in the office of the surveyor-general.

That the following statement exhibits the origin, nature, confirmation, & areas of all the private claims & donations conflicting with the grant to Coleman as protracted by deponent, & represented by the plan marked "F."

T. 1 S., R. 7 E.

Sec. 53. Claim of Sam'l Carter, under Thomas Bell, Cosby's list of actual settlers No. 641, (State Papers, Pub. Lands, vol. 3, p. 67, Green's ed.,) confirmed by the act of March 3rd, 1819, for 640 acres, as a donation, & surveyed to contain 645.98 acres.

Sec. 55. Claim of Zedekiah Martin, Cosby's list of actual settlers No. 632, (State Papers, Pub. Lands, vol. 3, p. 67, Green's ed.,) confirmed by act 3rd March, 1819, for 640 acres, as a donation, & surveyed to contain 673.04 acres.

Sec. 37. Claim of John Morrow, Cosby's list of actual settlers No. 654, (State Papers, Pub. Lands, vol. 3, p. 67, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 598 acres.

Sec. 39. Claim of John McClendon, under C. B. Howell, under
82 John Roberts, Cosby's list of actual settlers No. 563, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 645.92 acres; partially in conflict only.

Sec. 38. Claim of John Roberts, under R. Roberts, Cosby's list of actual settlers No. 562, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,)

confirmed by act of March 3rd, 1819, as a donation, for 640 acres, and surveyed to contain 593.28 acres; partially in conflict only.

Sec. 43. Claim of Robert Yair, Rannell's & Kinchin's report of 19th January, 1825, Register B, No. 42, (State Papers, Pub. Lands, vol. 4, p. 312, Green's ed.,) being an order of survey, dated in 1806, for 1,000 arpen's, confirmed by the act of May 4th, 1826, surveyed to contain 843 acres; only partially in conflict.

Sec. 42. Claim of Nancy Tate, Cosby's list of actual settlers No. 565, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 648.23 acres; only partially in conflict.

Sec. 47. Claim of James Tate, under Charles Tate, Cosby's list of actual settlers No. 573, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres,
83 & surveyed to contain 635.70 acres.

Sec. 46. Claim of John Amacker, under Sarah Amacker, under Richard Mastin, under Dennis Dicks, Cosby's list of actual settlers No. 542, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of Mar. 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 647.16 acres; only partially in conflict.

Township 2 south, range 7 east.

Sec. 51. Claim of John Amacker, Cosby's list of actual settlers No. 541, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by the act of March 3rd, 1819, as a donation, for 640 acres; only partially in conflict, & surveyed to contain 632.67 acres.

Sec. 54. Claim of Jacob Ott, Cosby's & Skipwith's list of actual settlers of 24 Dec., 1819, No. 27, (State Papers Pub. Lands, vol. 3, p. 385, Green's ed.,) confirmed as a donation for 640 acres, by the act of 8th May, 1822, & surveyed to contain 656.70 acres; only partially in conflict.

Sec. 59. Claim of Elias Halley, Cosby's list of actual settlers No. 472, State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by the act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 670.50 acres.

Sec. 60. Claim of Jacob Ott, under Dixon Wainwright, Cosby's list of actual settlers No. 629, (State Papers, Pub. Lands, vol. 3, p. 67,
84 Green's ed.,) confirmed by the act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 544.34 acres.

Sec. 61. Claim of the heirs of James Hughes, Cosby's and Skipwith's list of actual settlers, of 24th Decr., 1819, No. 28, (State Papers, Pub. Lands, vol. 3, p. 385, Green's ed.,) confirmed by the act of 8th May, 1822, for 640 acres, & surveyed to contain 642.55 acres; only partially in conflict.

Sec. 39. Claim of William Dyches, Cosby's list of actual settlers No. 481, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, for 640 acres, & surveyed to contain 643.42 acres; only partially in conflict.

Sec. 41. Claim of John D. Singleton, Cosby's & Skipwith's list of actual settlers, of 24 Dec., 1819, No. 294, (State Papers, Pub. Lands, vol. 3, p. 388, Green's ed.,) confirmed by act 8th May, 1822, for 640 acres, & surveyed to contain 640 acres.

Sec. 43. Claim of Ethelfred Singleton, Cosby's list of actual settlers No. 447, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by the act of March 3rd, 1819, for 640 acres, & surveyed to contain 640 acres; only partially in conflict.

Sec. 42. Claim of Wm. Elsey, Cosby's list of actual settlers No. 476, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 660.47 acres; only partially in conflict.

85 Sec. 46. Claim of Thomas C. Warner, under Richard Vernon, Cosby's list of actual settlers No. 543, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 637.45 acres.

Township 3 south, range 7 east.

Sec. 55. Claim of Stephen Spikes, Cosby's list of actual settlers No. 479, (State Papers, Pub. Lands, vol. 3, p. 66, Green's ed.,) confirmed by act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 649.20 acres.

Sec. 61. Claim of Anderson Lain, Cosby's list of actual settlers No. 398, (State Papers, Pub. Lands, vol. 3, p. 65, Green's ed.,) confirmed by the act of March 3rd, 1819, as a donation, for 640 acres, & surveyed to contain 640 acres.

Sec. 41. Claim of Robert Kirkland, Rannell's & Kinchin's list of actual settlers, of 19th Jan., 1825, E, No. 134, (State Papers, Pub. Lands, vol. 4, p. 315, Green's ed.,) confirmed by act of 4th May, 1826, as a donation, for 640 acres, & surveyed to contain 638.43 acres; only partially in conflict.

That the aggregate area of all the foregoing private claims lying within the protracted boundaries of the grant to William Coleman, as laid down on the plan F, is equal to 11,580 76-100 acres; and that the aggregate area of all divisions & subdivisions of the public

86 lands embraced within said lines of said grant is equal to 3,357 25-100 acres; and that the total area of both private claims & *and* public lands within said lines of said grant is equal to 14,938 01-100 acres.

That said grant is shown in said plan, is situated in the present parish of Tangipahoa, on the west side or right bank of the Tangipahoa River, and contiguous to & south of the 31° *degree* latitude, or the old dividing line between the Spanish province of West Florida & the United States.

And deponent saith that he has no interest direct or indirect in the result of the suit of Andrew McMicken vs. The United States.

(Signed) H. GASCON.

Sworn to & subscribed before me this 27th May, 1873.

[SEAL.] (Signed) J. A. CHARBONNET,
Dy. Clk.

(Endorsed:) 26. A. McMicken vs. U. S. Affidavit of Henry Gascon. Filed May 27, 1873. (Signed) J. A. Charbonnet, dy. clk.

[Here comes plan F.]

87 I solemnly swear that I was surveyor-general of the United States for the district of Louisiana for many years, to wit, from the 1st July, 1853, to 26 Feb'y, 1861; that while such officer, one of my chief duties was to direct the resurveys of *of* old grants, & titles, & in the course thereof many, very many, old original grants, concessions, orders of survey, &c., necessarily passed under my close inspection, & in contrasting many in style, penmanship, signature, & paraph, I became familiar with them. And I believe the order herewith filed, dated

26th Feb'y, 1806, directed to Ira C. Kneeland by Vincent Sebastian Pintado, is genuine, & the true signature of said Pintado, of which I have examined many hundreds.

(Signed) WM. J. McCULLOH.

Sworn to & subscribed before me this 31st May, 1873.

[SEAL.] (Signed) J. A. CHARBONNET,
Dy. Clk.

(Endorsed:) Andrew McMicken vs. United States. No. 26. Affidavit of Wm. J. McCulloh. No. 26. Filed June 10th, 1873. (Signed) J. A. Charbonnet, dy. clk.

88 District court of the United States for the district of Louisiana.

The answer of the United States, by J. R. Beckwith, attorney of the United States for the district of Louisiana, to the petition of Andrew McMicken, trustee, plaintiff.

Defendants, now and at all times hereafter saving & reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, & other imperfections in the said plaintiff's petition contained, & particularly saving & reserving all benefit & advantage of their demurrers herein filed, & insisting upon the same, for answer unto the said petition, or unto so much & such parts thereof as they are advised is or are material or necessary for them to make answer unto, these defendants answering saith: That they are ignorant whether any such grant of land as is set forth in plaintiff's petition was made to the person therein named in manner & form as alleged, & they therefore deny the same; that they are ignorant of the *mesne* conveyances by which the title thereto is alleged to have been transferred to the plaintiff herein, & of the heirship of the parties as alleged in their petition, and they deny the same; and they further specially deny that the plaintiff, Andrew McMicken,
89 or those whom he claims to represent as trustee, has, or ever did have, any title by virtue of any transfer or conveyance from said Charles McMicken to lands alleged to have been granted to Wm. Coleman.

And further answering, defendants say that if any grant of lands, as in said petition alleged, was made by any competent authority under the Spanish government to the said William Coleman, which is denied, the same was never separated by actual survey & metes & bounds from the mass of the public domain, & is therefore null & void by reason of uncertainty of location & vagueness of description; & defendants deny that the descriptive plats annexed to plaintiff's petition as part thereof show with legal certainty or accuracy the locality of the said grant & the lands & townships, or portions thereof, which are covered by the same.

And, further answering, defendants aver that under the 6th section of the act of Congress, approved 22nd of June, 1860, under which this suit is instituted, petitioner is entitled, in the event of the confirmation of the titles by the court, & in case it shall appear that the lands claimed or any part thereof have been sold by the United States, or the surveyor-general shall ascertain that the same or any part thereof cannot be surveyed or located, to enter upon public lands of the U. S. a quantity equal in extent to that sold by the Government, &, by the 11th section of the said act, to a patent for so much as remains unsold

90 & public. Defendants aver that it is nowhere in said petition alleged what quantity of the lands claimed to be embraced within the limits of the said grants have been sold by the U. S., or what portions thereof, according to the legal divisions & subdivisions of the surveys of the United States, remain unsold, & public, or cannot be surveyed & located by reason of any valid or legal cause; & that they are ignorant thereof & require strict proof concerning the same.

Further answering, defendants say that on the 16 June, 1846, Charles McMicken, through whom the plaintiff herein claim', filed suit in the U. S. district court for district of Louisiana, against defendants, under the provisions of an act of Congress approved 17th June, 1844, in which suit he claimed the confirmation of the title of said grant made to the said Coleman as in plff.'s petition now alleged, and on the 27th March, 1849, a final decree was rendered in the said cause by the said court in favor of the defendants, the U. S.; and the said plaintiff, Charles McMicken, acquiesced therein, & neither applied for a rehearing or asked for an appeal from the said decree. Wherefore the said defendants say & plead that the said decree is a final judgment against said title, & is res adjudicate, & conclusive upon the plaintiffs herein.

91 And further answering, defendants say that the said alleged grant to Coleman was inchoate, & was made on the express conditions that he, the said Coleman, should "make the high road & do the usual clearing of timber in the absolutely fixed limit of one year, and that said concession (is) was to remain null & void if at the expiration of the precise space of three years the land shall not be found to be settled upon." * * * Within which said period of three years the survey was in express terms ordered to be carried out uninterruptedly, & to be returned to the governor-general, so as to provide the interested party with the corresponding title-papers in due form.

Defendants aver that the said period of three years, within which the said Coleman was to perform the said conditions & "acquire title-papers in due form" expired on the 2d day of January, 1802, whilst the Spanish government still remained in possession of the territory. And defendants deny that the said Coleman ever complied with the aforesaid conditions of the said grant, or ever caused a survey of the said lands to be made, or ever "acquired title-papers in due form" thereto; and further they aver that by reason of his failure so to do, the said grant, by its very terms, became & remains null & void.

92 And further answering, defendants say that the said Coleman having thus failed to comply with the conditions of said grant, the said lands reverted to the public domain & were settled upon & occupied by others prior to the cession of the territory to the United States, and the claims thereto of said actual settlers, thus emanating from & originating under the government of Spain, have since been recognized and confirmed by the United States; & the said Coleman, by his own laches, has forfeited, both in law & equity, all claim, if any he ever had, arising under said grant.

And further answering, defendants say that it was not the design or object of the act of Congress of the 22nd June, 1860, under which this suit is instituted, to grant or give to claimants whose titles may be confirmed either a patent or certificate of location for any portion of land embraced within the limits of their claims which may be held by others under titles originating with or emanating from any foreign government formerly in possession of or claiming sovereignty over the district of country wherein the same is located, & which titles have been heretofore recognized & confirmed by the Government of the United

States. Nor was it the object or design of the said act to grant
93 to such claimants either patents or certificates of location for or on account of any lands within the boundaries of their said claims which may heretofore have been gratuitously donated to others by the United States. And defendants aver that all or a very large portion of the lands included in the limits of the plaintiff's claim are held under titles originating with or emanating from foreign governments formerly in possession of or claiming sovereignty over the territory, & which titles have, before the institution of this suit, been recognized & confirmed by the Government of the United States, or are held by others in virtue of donations gratuitously made to actual settlers & others by the Government of the United States long prior to the institution of this suit, as will in part appear by reference to the plats annexed as ex'ibits to plaintiff's petition, & as will be more fully shown by evidence on the trial of this suit.

And defendants deny that any other matter, cause, or thing in the said plaintiff's petition contained, material or necessary for them to make answer unto, & not herein & hereby well & sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge & belief of defendants.

All which matters & things this defendant is ready & willing to aver, maintain, & prove as this hon. court shall direct, & humbly pray
94 to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

(Signed) J. R. BECKWITH,
U. S. Atty.

(Endorsed:) 26. Land-docket. U. S. district court. Andrew McMicken vs. The United States. Answer. Filed May 9, '73. (Signed) K. Loew, dy. clk. (Signed) J. R. Beckwith, U. S. atty.

Replication.

To the honorable district court of the United States for the district of Louisiana.

The replication of Andrew McMicken, trustee, to the answer of the United States, filed by the district attorney thereof, in the suit pending in this honorable court between the said replicants & the United States.

These replicants, saving & reserving unto themselves all & all manner of advantage of exception to the manifold insufficiencies of the said answer, for replicating thereunto say that they will aver & prove their said bill to be true, certain, & sufficient in the law to be answered unto, & that said answer of said defendant is uncertain, untrue, &
95 insufficient to be replied unto by these repliants, without this, that any matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed, & *advised*, traversed or denied, is true; all of which matters and *&c. &* things these repliants are & will be ready to aver & prove as this honorable court shall direct; & humbly pray, as by their said bill they have already prayed, *and* &c.

(Signed) R. H. & J. L. BRADFORD,
Attys. for Complainants.

(Endorsed:) 26. United States district court. Andrew McMicken, trustee, vs. United States. Replication filed May 15, '73. (Signed) J. A. Charbonnet, dy. clk.

U. S. district court, dist. of Louisiana.

ANDREW MCMICKEN, TRUSTEE, *vs.* THE UNITED STATES. } No. 26. New land-docket.

Note of evidence offered by complainant.

DOCUMENT A.—Being copies duly certified as true & correct by the register of the U. S. consolidated land-office in New Orleans, Louisiana, of—

1st. Petition of Wm. Coleman, of 17 Dec., 1798, directed to the governor-general, praying for grant of lands. (Spanish.)

2nd. The certificate of Vcte. Sebastian Pintado, of 19 Dec., 1798,
96 in favor of Wm. Coleman, & showing what vacant lands might be granted him. (Spanish.)

3rd. The recommendation of Carlos de Grand Prè of 22nd Dec., 1698, in favor of Wm. Coleman, directed to the governor-general. (Spanish.)

4th. The concession or grant of 2d January, 1799, by the governor-general de Lemos, in favor of Wm. Coleman. (Spanish.)

DOCUMENT A².—Order of survey (in English) of 26th February, 1806, given by Pintado to Kneeland to survey & locate the grant to Coleman.

DOCUMENT B.—Act of private sale from Wm. Coleman to Andrew McMicken, of 16 Sept., 1874, duly acknowledged and proved, conveying title to the grant.

DOCUMENT C.—Original notice of claim by McMicken, dated 26 Dec., 1824, filed before the board of land commissioners, & marked & authenticated as filed by the clerk of the board.

PLAN D.—Showing the divisions & subdivisions of the lands supposed to in conflict with the grant to Coleman, as shown by the United States surveys, filed as an exhibit & as a part of complainant's petition, in which petition the plan is sworn to as truly representing the lands supposed to be in conflict.

97 DOC. E.—Copy of will of Charles McMicken, duly proved & admitted to probate & ordered to be executed, in the probate court of Hamilton County, in the State of Ohio.

PLAN F.—Made by Henry Gascon, chief clerk of the surveyor-general's office, showing the public lands and private land-claims covered by the grant to Coleman, as located by him in strict pursuance of the calls of the titles, to be read in connection with his affidavit.

The joint certificate of the register & receiver of the United States consolidated land-office, upon the plan F, showing the area of all public lands and private claims covered by the grant to Coleman, as located by the plan F, & that the whole has been sold or disposed of by the United States.

Translation of doc. A, duly proven as true & correct by the oath of Thomas E. Evershed.

Affidavit of Wm. J. McCulloh, formerly surveyor-general of Louisiana, showing the genuineness of Pintado's signature to doc. A².

Affidavit of Henry Gascon, chief clerk, &c., showing upon what principles & on what authority he drew the plan F, & also showing the
98 nature & origin of all private claims covered by the Coleman

grant, & the separate & aggregate areas of all public lands & private claims so in conflict.

Copy, duly certified, of the affidavit of Wm. J. McCulloh, filed as evidence in the suit, No. 12, of Mrs. F. E. Trudeau & Husband vs. The United States, adduced in this suit to show the authority & weight due Mr. Gascon's work & testimony.

(Endorsed :) 26. New land-docket U. S. dist. court. Andrew McMicken, trustee, vs. The United States. Note of complainant's evidence. Filed June 12, '73. (Signed) J. A. Charbonnet, dy. clk.

McMICKEN
vs.
U. S.

Mem. of defdt.'s ev.

No. 1. Extract from report of commissioners.
" 2. Copy of decree of U. S. district court La., in case Charles McMicken vs. United States, No. 114.
" 3. Admissions.

(Endorsed :) 26. U. S. district court. Andrew McMicken vs. United States. Mem. of defdt.'s evidence. Filed June 13, '73. (Signed) J. A. Charbonnet, dy. clk.

99 [Extract from the American State Papers, (Duff Green's edition,) vol. 4, pages 310, 314, & 316. Claims to land in St. Helena district, La., communicated to the Senate 28th December, 1825.]

TREASURY DEPARTMENT, 28 *Dec.*, 1825.

SIR: I have the honor to transmit herewith a copy of the report of the reg. & rec. of the land-office of the district of St. Helena, prepared in obedience to an act of Congress of 26 May, 1824.

(Signed) RICHARD RUSH.

To Hon. JOHN C. CALHOUN, *Pres. Senate.*

Register D, (p. 314,) of incomplete titles, which, in the opinion of the undersigned, ought not to be confirmed.

No.	Present claimant.	Original claimant.	Nature of claim.	Date of claim.	Quantity claimed.			Where situated.	By whom issued.	When surveyed.	By whom.	Inhabited & cultivated.	
No.					Front.	Depth.	Area, in arpt.					From—	To—
22	Charles McMicken ..	William Coleman....	Order of survey..	2 January, 1799..	410	40	16,400	St. Helena...	G. de Lemos.				

SAM'L J. RANNELLS, *Register.*
WM. KINCHIN, *Receiver.*

(Page 316,) register D, contains incomplete titles, which, in the opinion of the commissioners, ought not to be confirmed, the claimants not having complied with the requisitions of the law as regards either habitation or cultivation.

(Signed) SAM'L J. RANNELLS, *Register.*
(") WM. KINCHEN, *Receiver.*

LAND-OFFICE, ST. HELENA COURT-HOUSE, 19 *Jan.*, 1825.

100 (Endorsed:) 26. Land-docket U. S. district court. Andrew McMicken vs. The United States. Defdt.'s evidence. No. 1. Extract from commissioner's report. Filed June 13, '73. (Signed) J. A. Charbonnet, dy. clk.

District court of the United States for the eastern district of Louisiana.

FRIDAY, 23*rd March, A. D.* 1849.

Present: Hon. Theo. H. McCaleb, district judge.

CHARLES MCMICKEN *vs.* THE UNITED STATES. } No. 114.

This cause came regularly up for hearing to-day, the complainant not appearing; & no proof of plaintiff's claim being of record, it is therefore ordered & decreed that the cause be dismissed at plaintiff's costs and judgment entered up in favor of the United States.

Judgment rendered 23rd March, 1849.
" signed 27 " "

Clerk's office.
A true copy.
N. Orls., June 13, '73.
[SEAL.] (Signed) J. A. CHARBONNET,
Dy. Clk.

(Endorsed:) 26. Land-docket U. S. district court. Andrew McMicken vs. The United States. Defdt.'s evidence, No. 2. Copy of decree in former suit. Filed June 13, '73. (Signed) J. A. Charbonnet, dy. clk.

101 *Admissions.*

ANDREW MCMICKEN *vs.* THE UNITED STATES. } No. 26.

It is admitted that on the 16th June, 1846, Charles McMicken, through whom the plaintiff in this case claims title, instituted suit in the U. S. dist. court for eastern district of Louisiana against the United States, No. 114 of the land-docket of that court, under the provisions of the act of Congress of the United States approved 17th June, 1844, (Statutes at Large, vol. 5, page 676,) for the confirmation of the grant alleged to have been made by Manual Gayoso de Lemos, governor-general, &c., on the 2nd January, 1799, to William Coleman, being the same grant the validity of which is at issue in this case. It is further admitted that the said Charles McMicken did not ask for an appeal from the decree of the said district court in said cause, nor did he apply to the said court for a new trial.

(Signed) J. W. GURLEY,
Asst. U. S. Atty.
(Signed) R. H. & J. L. BRADFORD.

(Endorsed:) 27. U. S. district court. Andrew McMicken vs. The United States. Filed June 13, '73. (Signed) J. A. Charbonnet, dy. clk.

U. S. district court.

A. McMICKEN, TRUSTEE, *vs.* THE UNITED STATES. } No. 26, land-docket.

102 Now comes the defendants, by J. R. Beckwith, their atty., & move to suppress, for reasons herein stated, the following documents offered by plaintiff:

To suppress Document A described of plffs.' list of evidence, on the ground that it cannot be admitted in evidence until the existence of the originals has been first established, & their non-production accounted for.

To suppress Doc. E of plffs.' list of evi dence, being will of Charles McMicken, on the ground that it is irrelevant, showing no title in the plaintiff or in his cestui que trust, and on the further ground that it appears from the certificates, bonds, &c., attached to said will that the estate of the testator is in course of administration & in the hands of the executors, & they alone have the right to bring this suit, and on the further ground that there is no disclosure in the record of any order from competent authority putting plaintiff, as trustee, in possession of the claim; & on the further ground that it does not appear that said will has ever been admitted to probate & made executary in Louisiana.

To suppress Plans D & F as not properly authenticated, and as to Plan F & the joint certificate of the register & receiver thereon, on the additional ground of irrelevancy, inasmuch as under the act of
103 Congress the court is simply required to pass upon the validity of the alleged grant, leaving the question as to what portions of the lands have been sold & donated & still remain public to be determined by the officers of the land-office.

To suppress translation of Doc. A on the same grounds on which the document itself was moved to be suppressed.

To suppress so much of the deposition of Henry Gascon as purports to give the nature of private claims within said grant & the area of the claims & of the public lands within its boundary, on the ground that under the act of Congress the court is not called on to determine those questions.

To suppress the certified copy of affidavit of Wm. J. McCulloh, filed in suit No. 12, on the ground that it cumbers the record with matters wholly irrelevant to the questions at issue in this case.

(Endorsed:) 26. U. S. district court. A. McMicken vs. United States. Defdts.' motion to suppress. Filed June 14, 1873. (Signed) K. Loew, dy. clk.

MAY 3RD, 1873.
SATURDAY, 14*th June*, 1873.—Present, his honor E. H. Durell.

104 A. McMICKEN *vs.* UNITED STATES. } 26.

By consent of counsel in open court the cause is submitted upon the pleadings & the evidence in the record, the motion to suppress testimony to be disposed of in the decision on the merits.

Adjourned.

TUESDAY, *March* 31*st*, 1874.—Present, his honor E. H. Durell.

A. McMICKEN
vs.
UNITED STATES. } No. 26.

For reasons orally assigned by the court, it is ordered, adjudged, & decreed that judgment be entered for the defendant with costs.
Adjourned.

WEDNESDAY, *April* 29*th*, 1874.—Present, his honor E. H. Durell.

A. McMICKEN, TRUSTEE,
vs.
UNITED STATES. } 26.

On motion of R. H. & J. L. Bradford, solicitors for the com-
105 plainant herein, & on suggesting to the court that the said complainant feels aggrieved by the final decree in this case against him rendered, & believing that there is error in said decree—
It is ordered that the said complainant be, & is hereby, allowed an appeal therefrom to the Supreme Court of the United States, returnable at the next term thereof, on the 2nd Monday of October next, the same to act as a supersedeas herein, upon giving bond & security for costs in the sum of $500, conditioned as the law directs.
Adjourned.

ANDREW McMICKEN, TRUSTEE,
vs.
THE UNITED STATES. } No. 26.

On motion of R. H. & J. L. Bradford, solicitors for the complainant herein, & on suggesting to the court that the said complainant feels aggrieved by the final decree in this case against him rendered, & believing that there is error in said decree:
It is ordered that the said complainant be, & is hereby, allowed
106 an appeal therefrom to the Supreme Court of the United States, returnable at the next term thereof, on the second Monday of October next, the same to act as a supersedeas herein, upon giving bond & security for costs in the sum of five hundred dollars, conditioned as the law directs.

(Endorsed:) 26. Andrew McMicken, trustee, vs. United States. No. 26. Motion for appeal. Filed April 29, 1874. (Signed) K. Loew, dy. clk.

UNITED STATES OF AMERICA,
District of Louisiana:

District court of the United States.

ANDREW McMICKEN, TRUSTEE,
vs.
UNITED STATES. } No. 26. Appeal-bond.

Know all men by these presents that we, Andrew McMicken, as principal, & J. L. Harris, as surety, are held & firmly bound unto the clerk

of the district court for the dist. of La., for the use of the parties in interest, in the sum of five hundred dollars, to be paid to the said
107 clerk of the district court for the use of, &c.; for the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves & each of us, our & each of our heirs, executors, and administrators, jointly & severally, firmly by these presents, sealed with our seals & dated at New Orleans the 29th day of April, 1874.

Whereas the above-named Andrew McMicken, trustee, has appealed to the next term of the Supreme Court of the United States from a final judgment of the district court of the United States for said district, rendered against him on the 31 day of March, 1874, & signed on the 6th day of April, 1874, in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect & answer all damages & costs & satisfy whatever judgment may be rendered against him if he fail to make his appeal good, then this obligation to be void; otherwise the same shall be & remain in full force & effect.

(Signed) ANDREW McMICKEN, [L. S.]
By J. L. BRADFORD, *Atty.* [L. S.]
(Signed) J. L. HARRIS. [L. S.]

(Endorsed:) No. 26. United States district court. Andrew McMicken vs. United States. Appeal-bond. Filed April 29, '74. (Signed) K. Loew, dy. clk.

108 District court of the United States for the district of Louisiana.

I certify that the foregoing 107 pages do contain & form a correct & complete transcript of the original record in the case of Andrew McMicken vs. The United States, No. 26 of the new land-docket of said court, embracing all the proceedings had, documents filed, & evidence adduced in the trial of said cause. Plans D & F are hereto annexed as part of the transcript.

In faith whereof I hereto set my hand & the seal of our said court at New Orleans this 25th June, 1874.

[SEAL.] T. W. DEKLYNE, *Clerk.*
Per K. LOEW, *Dy. Clk.*

(Indorsement on cover:) No. 654. Andrew McMicken, appellant, vs. The United States. Louisiana D. C. U. S. Filed 5th July, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

No. ~~654~~ 391

ANDREW McMICKEN, Trustee, Appellant,

vs.

THE UNITED STATES, APPELLEE.

Appeal from the District Court of the United States for the District of Louisiana.

Brief for McMicken.

STATEMENT.

This is a proceeding in Equity, originally instituted against the United States in the District Court of the United States for the District of Louisiana, by Andrew McMicken, trustee, under the Act of Congress approved June 22, 1860, (12 Statutes, p. 85,) as revived and re-enacted, for three years, by the Act approved June 10, 1872, (17 Statutes, p. 378.) These acts provide for the adjustment of private land claims in Florida, Missouri and Louisiana, either by proceedings before Boards of Commissioners, or in the Courts. McMicken, in his petition, prayed for judicial recognition of the validity of a Spanish grant or concession of sixteen thousand four hundred (16,400) arpents of land, equal to thirteen thousand eight hundred and forty-eight and $\frac{82}{100}$ (13,848.82) acres, in the parish of Tangipahoa, in the said State of Louisiana, made to William Coleman, on the 2d day of January, 1799, by Manuel Gayoso

de Lemos, Governor-general of the Spanish provinces of Louisiana and West Florida, embracing a tract of forty (40) arpents in depth with a front of four hundred and ten (410) arpents, on the west bank of the river Tangipahoa, and contiguous to and south of the thirty-first (31st) degree of latitude north of the equator.

The validity of this grant or concession, by Governor-general de Lemos, was afterwards, on the 26th of February, 1806, recognized by the Spanish authorities at Baton Rouge; and Don Vincent Sebastian Pintado, then Surveyor General of the Spanish province of West Florida, by commission in writing, appointed one Ira C. Kneeland, a deputy surveyor, and directed him to survey the lands granted, expressly referring, in said commission and order for survey, to the proceedings by which said grant or concession had been made to the said William Coleman. It does not appear that Kneeland made the survey, under this order, but the descriptive calls of the grant or concession were sufficient, without survey, to separate and distinguish the grant from the public domain, and it was, therefore, severed from it, prior to the cession of the territory in which the lands are situated to the United States, by fixed, natural and ascertainable boundaries, initial points, courses and distances. All of which will appear, by reference to documents annexed to plaintiff's petition, marked "A" and "A^2." All the written evidences of title, emanating from the Spanish government to Coleman, bear date prior to the cession, to the United States, of the territory or district in which the lands are situated; and the proceedings were had, during the period when the government of Spain had actual possession of and claimed and exercised jurisdiction and sovereignty over the same, and title vested in Coleman, before the change of sovereignty.

The said William Coleman being thus invested with title to the said lands, did, on the 16th day of September, 1814, sell, convey, transfer and deliver the same to Charles

McMicken, Jr., for a valuable consideration, as shown by paper annexed to plaintiff's petition, marked "B."

On the 26th day of December, 1824, the said Charles McMicken, Jr., presented his claim or title to said lands, to the land Commissioners, at St. Helena court-house, for the district east of the island of New Orleans and west of the Pearl river, to be, by them, recorded and reported to Congress, for recognition, &c., as will appear by reference to document annexed to plaintiff's petition, marked "C."

The said Commissioners, in due time, recorded the said claim, and, on the 19th of January, 1825, made their report on the same, in which they classed it as No. 22, in their Register D, and expressed the opinion that it should not be confirmed. This report was submitted to the Senate of the United States, December 28, 1825. All of which will more fully appear, by reference to Volume 4, Green's edition of the American State Papers, pages 310 to 316, inclusive. Printed record, page 39.

By act of Congress, approved April 8, 1812, the State of Louisiana was admitted into the Union; and by act, approved April 14, 1812, its boundaries were extended east of the Mississippi river, and north of the Bayou Manchac and lakes, so as to cover and embrace the territory, or district, in which said lands are situated.

The said Charles McMicken, jr., departed this life, at Cincinnati, in the State of Ohio, in the year 1858, leaving a will, wherein said lands and property were devised to the said plaintiff, Andrew McMicken, in trust, for the use and benefit of his wife, Rachel Ann, during the term of her life, and, after her death, to the children of the said Andrew McMicken and his said wife, share and share alike.

The said will was duly admitted to probate, in the Probate Court of Hamilton county, Ohio, and ordered to be executed, as will more fully appear by reference to document "E," annexed to plaintiff's petition; and the same

has also, been admitted to probate, and ordered to be executed, in the Probate Court, in the parish of Orleans and State of Louisiana.

But the United States disregarding the title of plaintiff herein, and that of those under and through whom he derived the same, by virtue of said grant or concession, and the subsequent conveyances, has extended its surveys over said lands, and disposed of the whole of them as public lands, by donations, sales, and alienations to persons other than plaintiff or those from and through whom he derived title, so that neither said plaintiff or those from or under whom he claims has had or enjoyed the possession of said lands, at any time or to any extent, for a period embracing more than twenty years, before the commencement of these proceedings, in the District Court of the United States. See Gascon's testimony, page 30, printed record and plans "D" and "F."

On these facts the plaintiff claims that he is entitled, as trustee as aforesaid, under international law, treaty stipulations and the legislation of Congress, to a judicial recognition and confirmation of the said grant or concession of sixteen thousand four hundred arpents of land; and the right to enter other lands, in lieu of those disposed of, by the United States.

The United States, in its answer to plaintiff's petition, denies this right, the grant to Coleman, the mesne conveyances, transferring title to the plaintiff herein, the title of plaintiff, and the parties, beneficially, interested, under him, as trustee, the heirship of all the parties, and that the descriptive plats, annexed to plaintiff's petition, (Plan "D,") shows, with legal certainty or accuracy, the locality of said grant; and avers that, if the grant was made to Coleman, the same was never separated, by actual survey and metes and bounds, from the mass of the public domain; and that it is, therefore, null and void, because of uncertainty of location, and vagueness of description;

that it is not alleged, in said petition, what quantity of the lands claimed to be embraced, in the limits of said grant, have been sold, by the United States, or what portions thereof, according to legal divisions and subdivisions, remain unsold and public, or cannot be surveyed and located, by reason of any valid or legal cause; that on the 16th day of June, 1846, Charles McMicken, through whom the plaintiff claims, commenced suit in the United States District Court for the District of Louisiana, against defendant, under the provisions of an act of Congress, approved June 17th, 1844, claiming confirmation of the title to said grant to Coleman, in which a final decree was rendered, in favor of defendant, in March, 1849, and that the same is conclusive upon plaintiff; that said grant to Coleman was inchoate, and was made, on the express condition that he should make a high-road and do the usual clearing of timber, within one year, and that said concession was to remain null and void, unless settled upon, within three years, and that, within that time, the survey was to be carried out and returned to the Governor, so as to provide the interested party, with the title papers, in due form; that the said period of three years, within which the said Coleman was to perform the said conditions, and acquire the title papers, expired, on the 2nd day of January, 1802, whilst the Spanish Government remained in the possession of the territory; and denies that the said Coleman ever complied with said conditions, caused a survey of said lands, or acquired title papers, in due form, thereto; and defendant avers that, by reason of such failure, the grant, by its terms, became and remains null and void, and that the lands reverted to the public domain, and were settled upon and occupied, by others, prior to the cession of the territory to the United States, and that the claims of actual settlers, thereto, originating under the Government of Spain, have since been recognized and confirmed, by the United States; and that the said Coleman, by his

laches, forfeited his rights, both in law and equity, under said grant; and that it was not the design of the act of Congress of June 22, 1860, under which these proceedings were instituted, to give or grant to claimants whose titles may be confirmed, either a patent or certificate of location, for any portion of the lands, embraced, within the limits of their claims, which may be held, by others, under titles, originating with or emanating from any foreign Government, formerly in possession of or claiming sovereignty, over the district of country, wherein the same is located, and which titles have been, heretofore, recognized and confirmed, by the Government of the United States, and that it was not the object or design of said act to grant, to such claimants, either patents or certificates of location, for or on account of any lands, within the boundaries of their said claims, which may have been, heretofore, gratuitously, donated to others, by the United States; and defendant avers that a very large portion of the lands, included, in plaintiff's claim, are held under titles, originating with or emanating from foreign Governments, formerly, in possession of or claiming sovereignty over the territory, which have, before the institution of these proceedings, been recognized and confirmed, by the Government of United States, or are held, by others, in virtue of donations, gratuitously, made to actual settlers and others, by the Government of the United States, long prior to the commencement of this suit.

On the trial in the Court below the defence offered no evidence. The plaintiff proved every material allegation, in his petition. The defendant, however, moved to suppress document "A" of plaintiff's evidence, on the ground that it could not be admitted in evidence, until the existence of the original had been established and its absence accounted for; and document "E," being the will of Charles McMicken, on the ground that it was irrelevant and did not show title in the *cestui que* trust, and that it appeared from the certificates, bonds, &c., attached, that

the estate of the testator was in course of administration, and in the hands of the Executors, who alone had the right to bring suit; and that there was nothing, in the record, showing any order from competent authority, putting plaintiff, as trustee, in possession of the claim, and, on the further ground that it did not appear that said will had ever been admitted to probate, or made executory, in Louisiana; and to suppress plans D and F, as not properly authenticated, and, as to plan F and the joint certificate of the Register and Receiver thereon, on the additional ground of irrelevancy, inasmuch as the Court was only required, under the act of Congress, to pass upon the validity of the grant and leave the question, as to what portions of the lands had been sold and donated, and what portions still remained public, to be determined, by the land officers, and to suppress the translation of document "A," on the same grounds as those assigned for the suppression of the original; and to suppress so much of the deposition of Henry Gascon, as purports to give the nature of private claims within said grant, and the area of the claims of public lands within its boundaries, on the ground that, under the act of Congress, the Court is not called on to determine those questions; and to suppress the certified copy of affidavit of Wm. J. McCulloh, filed in suit No. 12, on the ground that it cumbers the record with matters wholly irrelevant to the questions at issue in the case.

By consent of counsel in the submission of the case, on the pleadings and evidence in the record, this motion to suppress testimony was to be disposed of in the decision on the merits. The judge of the District Court rendered judgment in favor of defendant, without assigning any reasons in writing, from which the plaintiff appealed to this Court, where, under the act of June 22, 1860, as revived and renewed by the act of June 10, 1872, the case is now to be adjudged *de novo*.

Questions Involved.

I. *Did the Spanish government make a grant or concession to Coleman, as alleged in plaintiff's petition?*

II. *If so, did said grant describe the lands with such definiteness and certainty as to vest a right or title thereto, in the grantee, without survey?*

III. *Did Coleman, subsequent to the date and making of said grant, forfeit his rights under the same by a failure to comply with its conditions, or otherwise waive the same?*

IV. *If not, has plaintiff succeeded to the rights of Coleman?*

V. *If so, is he entitled to a judicial recognition and confirmation of his claim?*

VI. *Has the Government of the United States disposed of the lands granted, or any portion thereof, as public lands, to parties other than plaintiff, or those under and through whom he claims?*

VII. *If so, is the plaintiff entitled to make entry of other lands, in lieu of those so disposed of, and to judgment to that effect?*

Argument.

First. Did the Spanish Government make a grant or concession to Coleman, as alleged in plaintiff's petition?

The evidence on this point will be found in documents "A" and "A 2," annexed to plaintiff's petition, printed record, pages 4, 5, and 6, and the report of the land commissioners, p. 39. It clearly and conclusively establishes the fact that the grant or concession was made, by the Spanish Government to Coleman, as alleged in plaintiff's petition. A question is raised, however, as to the admissibility of this evidence, (so far as document A is

concerned,) on the ground that the same is not the original, &c., &c., and a motion was made to suppress the same. This motion should have been overruled, as the records from which the copies were taken were Government records, made and kept pursuant to law, under the supervision of commissioners, acting under oath, who were charged with the duty of making full investigation as to the genuineness and authenticity of instruments and documents recorded by them. These commissioners were assisted by a sworn clerk, versed in the French and Spanish languages and capable of making correct translations of such instruments or documents. The recording of grants, &c., was, by law, made compulsory. (See act of April 25, 1812, 2 Statutes, 713; act of March 3, 1819, 3 Statutes, 528; act of May 26, 1824, 4 Statutes, 59.) The records of grants, &c., thus made pursuant to law were, by act of Congress, required to be lodged with the registers of the appropriate land offices, and have been and are to this day recognized and treated as a basis for certificates of confirmation and patents for all claims confirmed by Congress. (Act March 3, 1819, section 12.) The copies submitted and marked "A" are correctly verified and certified, by the register of the land office, at New Orleans, as true, complete, and accurate copies of the records lodged and kept on file in his office. The documents were public writings, and so are the records from whence the register takes and certifies the copies. These records are so reliable that Congress frequently acts on abstracts of them, as sufficient evidence of the original grants, &c., recorded in them. (American State Papers, Vol. 3, pp. 35 to 72 and act March 3, 1819, sections 1, 2, and 3.) But aside from the repeated recognition of the reliability of these records by Congress, in legislating upon grants recorded in them, it has by direct legislation made them evidence in cases arising, as the present one does, under the act of June 22, 1860. The 7th section of that act, as revived, provides: "That when-

ever any claim is presented for confirmation, under the provisions of this act, which has heretofore been presented, before any board of commissioners under authority of Congress, the facts reported as proven, by the former board shall be taken as true *prima facie;* and the evidence offered before such former board and remaining of record, shall be admitted on the examination of the claims made under the provisions of this act." The act neither says nor implies that the existence or loss of the original documents shall be established before the record thereof shall be admitted in evidence, and, as the register of the land office could not, legally, allow the records to be taken from his office, the only way the records could be used in evidence, under the law, was through and by certified copies thereof, and these were, undoubtedly, as admissible as the records themselves. But aside from the acts of Congress to which we have referred, the copies were admissible on general principles. Books of enrolment of deeds are provable by immediate copy, duly verified. (1 Greenleaf on Evidence, section 484.) Where a deed is found duly engrossed on the registry, a copy is good evidence. (Booge *v.* Parsons, 2 Vermont, 456.)

The inability of plaintiff to produce the original papers showing a grant to Coleman in 1799 is neither strange nor suspicious. Taking into account the time that has elapsed, the successive changes of ownership, the death of parties, the extinction and separation of families, the chaos of war, and the consequent exposure of the papers to loss, by accident or fire, it would be strange indeed if he could do so. Surely he will not, under such circumstances, be held responsible or required to account for their absence in order to avail himself of the benefit of copies made and authenticated by the authorized agents and officers of the defendant in this suit. This would be unreasonable and oppressive. But if he could be required to account for these docuents the record shows that the last

that was known of them he placed them in the hands of officers of the defendant, pursuant to a law which did not provide for their return to him, and it must be presumed that they are still in the custody and under the control of defendant, unless destroyed by the successive fires which are known to have occurred at the St. Helena land office, where they were originally filed, and the New Orleans land office, to which the records of the St. Helena office were subsequently transferred. This is sufficient.

But the rights of plaintiff are not wholly or even mainly dependent upon the admissibility of the copies of the papers, annexed to his petition, marked "A." Even if these were not admissible as evidence, the fact that the grant was made to Coleman by the Spanish government, as alleged in plaintiff's petition, is fully proven and established by other evidence, to which no objection has been or can be made. By the 7th section of the act of June 22, 1860, the facts found and reported by the Commissioners, to whom Charles McMicken originally presented his claim for record and confirmation, must be taken as true *prima facie*. The Commissioners in their report (Volume 4, Green's edition American State Papers, page 314, Register D) found, as proven, that the said McMicken had an incomplete Spanish title to a tract of land 410 arpens front and 40 arpens deep, containing 16,400 arpens, situated in the then Parish or district of St. Helena, in the State of Louisiana, based upon an order of survey made by de Lemos, January 2, 1799. (See extract from said report, page 39, printed record.) Independent, therefore, of the evidence furnished by document "A," the plaintiff has estabtablished and proven the grant or concession to Coleman, the date of the same and by whom made, its locality and area, and the acquisition of title thereunder by McMicken. This is certainly sufficient in the absence of evidence to the contrary. We will remark, by way of explanation, that the Parish of Tangipahoa, in which the lands are sit-

uated, constituted a part of what was known as the Parish or district of St. Helena at the time when the Commissioners' report was made.

Second. Did said grant or concession describe all lands granted with such definiteness and certainty as to vest a right or title thereto in the grantee, without survey?

We contend that it did, and that there is no ground upon which the contrary can be supported or maintained. The most that can be said is that without survey and the issuance of final title papers the grant remained inchoate or incomplete. But this does not affect the question of its validity or create a bar to its confirmation, if it described the lands granted in such a manner and with such particularity as to enable the Government to identify them. The mere fact that a grant made by a foreign government is found incomplete, either for want of an actual survey of boundaries or any other thing necessary to its completion, has never been held to render it invalid or null and void, as defendant's answer assumes. On the contrary, the Government has uniformly recognized its obligation to respect, confirm, and perfect incomplete grants, whether surveyed or unsurveyed, if found genuine and susceptible of identification. This it was bound to do, according to the principles of international law and under treaty stipulations, and Congress has not only repeatedly confirmed such inchoate grants by direct legislation, but provided for their presentation to and confirmation by Courts and Commissions, and these have, under the authority thus conferred upon them, recognized and confirmed them. (See Act of Congress approved March 2, 1805, providing for the adjustment of claims to land within the Territory of Orleans and district of Louisiana, Statutes at Large, Volume 2, page 324, and Act Supplementary thereto, approved April 21, 1806, *Ib.*, page 391; Act approved March 3, 1807, respecting claims to lands in the Territories of Orleans and Louisiana, *Ib.*, page 440; Act approved April

25, 1812, for ascertaining titles and claims to lands in that part of Louisiana lying east of the Mississippi River and the island of Orleans, *Ib.*, page 713; Act approved February 27, 1813, giving further time for registering claims, &c., in Louisiana, *Ib.*, page 807; Act approved March 3d, 1819, for adjusting the claims to land, &c., in the districts east of the island of New Orleans, Statutes at Large, Volume 3, page 528; Act approved May 8, 1822, supplementary to the several acts for adjusting claims to lands, &c., in the districts east of the island of New Orleans, *Ib.*, page 707; Act approved May 26, 1824, to enable claimants to land, in Missouri and Arkansas, to institute proceedings to test the validity of their claims, Statutes at Large, Volume 4, page 52; Act approved May 26, 1824, supplementary to the several acts providing for the adjustment of claims to land in the St. Helena and Jackson Court-House districts, *Ib.*, page 59; Act approved February 5, 1825, confirming certain claims to lands in the western district of Louisiana, *Ib.*, page 81; Act of March 3, 1851, to ascertain and settle private land claims in California, Statutes at Large, Volume 9, page 631. See also Delassus *v.* The United States, 9 Peters, 117; Choteau's Heirs *v.* The United States, *Ib.*, 147; Soulard's Heirs *v.* The United States, 10 Peters, 100; The United States *v.* Moreno, 1 Wallace, 400.)

"It is a matter of recorded history, that inchoate concessions, even such as were *unlocated*, *unsurveyed* and having nothing special in their character, were the objects of sale, transfer, inheritance and devise." (5 State Papers, 705, Green's edition.) Such concessions were sold under execution, by the Spanish authorities. *Ib.* These transfers have been recognized by the Courts of the United States. Hogan v. Page, 2 Wallace, 605; Choteau's Heirs v. The United States, 9 Peters, 147; Bissell v. Penrose, 8 Howard, 317; Carpenter v. Rannells, 19 Wallace, 138, and Connoyer v. Schaeffer, 22 Wallace, 254.

These authorities show, conclusively, that a survey was not necessary to the validity of the grant, and that inchoate, unsurveyed grants and concessions have always been respected and protected, by the Government, as private property, and confirmed as such, to the original grantees or their assigns or legal representatives. But it is not necessary, in this case, for the plaintiff to rely upon general principles or authorities, as the act of June 22, 1860, under which he sues, gives the Court jurisdiction, in all cases, where there has been an investiture of title, in the original claimant, by a separation of the claim from the mass of the public domain, either by an actual survey or definition of fixed natural and ascertainable boundaries, or initial points, courses and distances, by competent authority, prior to the cession of the territory to the United States, whether the grant or concession was complete or incomplete. (Sections 1 and 11.)

Now, while we admit that it is not known or claimed that an actual survey, of the grant to Coleman, was made, yet there was a separation of the claim from the mass of the public domain, by the language and terms of the grant or concession and the papers accompanying it, upon which it was based and to which it refers. These muniments of title (document A,) call for 410 arpens front, on the Tangipahoa river, in the district of St. Helena, an important stream then and now well known, running in a southerly course from Mississippi into Louisiana. The west bank was described as the side of the river on which the lands were to be taken. This of course established the river, as the eastern boundary of the grant. The claim was to begin at the 31st degree of north latitude, which constituted its northern boundary, as it was the line of the province. That line was well known or at least easily ascertainable, as it had long been, by treaty, the line of demarcation, between the province of West Florida, under France, Great Britain and Spain, respectively, and the present territory

of the State of Mississippi, held, at different times, by England, Spain and the United States. The land, then, was to be taken in a tract contiguous to and south of the well known line. In other words, "the line of demarcation," as it was known in the language of the times, was to be the northern boundary of Coleman's concession. The depth of the grant was a matter of custom. It was always understood to be 40 arpens, when the contrary was not expressed. (O'Reilly's Regulations of 1770, Art. 1; White's Recopilacion, 2, p. 229; articles 8 and 10 of Morales' Regulations, of the 17th July, 1799, *Ib.*, p. 236. This appears, also, by Pintado's order of survey, (document A[2],) and the report of the land commissioners, printed record, p. 39.

The area, it is true, was not expressed, but it was always understood to be the product of the front multiplied by the depth, or, in the case at bar, 410 multiplied by 40 arpens—equal to 16,400 superficial arpens, or 13,848.82 acres.—(Laws, Opinions, and Instructions, part 2, No. 670, p. 715.) It is clear to any intelligent mind that such descriptive terms identified the lands with certainty, and in the language of the act of June 22, 1860, separated them from the mass of the public domain "by fixed natural and ascertainable boundaries, initial points, courses and distances," for we have as the eastern limit, the Tangipahoa river, a fixed natural boundary; on the north, the 31st degree of north latitude, a known or ascertainable boundary; the initial point was the intersection of this northern line with the river. These being given and fixed, the west and south lines could have been easily ascertained, and established, by the courses and distances, also, fixed, by the front and depth of the grant, and these established lines. Any competent surveyor could have located the grant according to these calls. The testimony of Henry Gascon, the chief clerk, in the Surveyor General's office, and an expert, in such matters, is clear on this point.

He says "any competent surveyor could readily survey

and locate the grant," and that he, as a draughtsman used to protracting surveys from field notes, or by courses and distances, from fixed and known points, had no difficulty in laying down all the boundaries of the concession to Coleman, as they would have been established, on the ground, by a Spanish surveyor, pursuing the calls of the title sued on. The investiture of title in Coleman, by a separation of his claim from the mass of the pulic domain, by defined fixed natural and ascertainable boundaries, initial points, courses and distances, was by competent authority, and prior to the cession of the territory to the United States. The concession to Coleman was made January 2, 1799. The United States did not acquire the territory, until 1803. The concession defining the boundaries was made by Don Manuel Gayoso de Lemos, who was at the time the Spanish Governor General, of the then Spanish province of Louisiana and West Florida. (White's Recopilacion, 2, p. 456.) This was, it is true, subsequent to the date of the royal order restoring to the Intendants the power to grant lands, (White's Recopilacion, 2, pp. 477–478,) but it was before the publication of such order, at New Orleans, in Intendant Morales' Regulations, of July 17, 1799, and hence before the new arrangement went into effect, in the province of Louisiana. The concession to Coleman was, therefore, made by "competent authority," and prior to the cession of the territory to the United States. This concession is not in the category of *de facto* grants.

Third. Did Coleman, subsequent to the date and making of the grant, forfeit his rights, under the same, by a failure to comply with its conditions, or otherwise waive the same?

We answer no. The conditions in this case, the noncompliance with which is alleged by defendant as a cause of defeasance and forfeiture, are all conditions subsequent. They are few and simple; only such as the Spanish regulations annexed to all grants. The grantee was required to

open a road and clear the usual amount of land within one year, and make settlement on the lands within three years. After the lapse of three quarters of a century we confess our utter inability to meet the objection of defendant by [direct] proof on this point. Fortunately, we are excused from doing so by the wisdom and humanity of the law. But if it be necessary to establish the fact of Coleman's compliance with the conditions of the grant, the circumstances surrounding and attending this case do it with sufficient certainty without other evidence, for, according to the principles laid down by the Supreme Court in the case of Choteau's Heirs *vs.* The United States, (9 Peters, 147,) and other leading cases, the law raises a presumption, not only that Coleman performed and fulfilled said conditions, but that that fact was shown to the Spanish authorities, who recognized the grant and made an order for its survey in 1806, more than seven years after it had been made, in order that title in due form might issue, (Document A 2.) The time had then fully elapsed for the performance of the conditions. In fact, it had expired before the United States acquired title to Louisiana. It certainly cannot be presumed that this order for survey was made, unless the Spanish authorities were satisfied that Coleman had complied with the conditions and had not forfeited his grant.

Strict and exact proof of compliance with conditions is not required by law, in a case like this. The Supreme Court, in the case of Arredondo *v.* The United States, (6 Peters, 745,) say that, "though a court of law must decide according to the legal construction of the condition, and call on the party for a strict performance, yet a court of equity, acting on more liberal principles, will soften the rigor of law, and though the party cannot show a legal compliance with the condition, if he can do it *cy-pres*, this will protect and save him from a forfeiture;" and in the case of the United States *v.* Sibbald, (10 Peters, 321,) in-

volving a grant made upon conditions, the Court say, that "the evidence in this and the other cases, which have been decided, is very full and clear that no grant has ever been annulled or revoked by the Spanish authorities for any cause; and there is no instance of a governor having granted land which had been before granted on condition; and it may well be doubted whether it would have been reannexed to the royal domain had the province remained under the dominion of the King of Spain; *nor is there any provision of any law of Congress which specially requires the Court to inquire into the conditions on which grants were made.*" (The *italics* are our own.) In the case of Choteau's Heirs *vs.* The United States, (9 Peters, 153,) the Court further says, after deciding that the claimants were not bound to prove to the Court the performance of the conditions by the grantee, that, "It is remarkable that, if we may trust the best information we have on the subject, neither the governor nor intendant general has ever refused to perfect an incomplete title granted by a deputy governor or sub-delegate." In Coleman's case the Governor General, himself, made the concession, and the act under which we sue was conceived and should be executed and administered in a more liberal spirit than any which preceded it. It was intended to afford equitable relief to meritorious and long-suffering claimants, whose rights had not been adequately protected, by previous legislation on the subject of foreign titles, or disregarded, by the Government. It should be liberally construed according to its spirit, and so as to relieve the present *bona fide* owners of grants and concessions from making proofs which time and death have rendered impossible.

The Spanish authorities did not consider or treat Coleman's grant as forfeited; consequently it remained private property until the cession of the territory to the United States, and our Government is bound by the law of nations and its treaty stipulations to treat and respect it as

private property. (Delassus *v.* The United States, 9 Peters, 133.) We say that the Spanish authorities did not regard or treat this grant as forfeited, because there is no record declaring a forfeiture and re-annexing it to the public domain. By the laws, customs, and usages of the Spanish government the same formality and solemnity were observed in annexing forfeited lands to the domain, as when they were granted or conceded. All annexations were declared by an ordinance of Louis the XV, in 1743, to be null and void and of no effect *unless they were* judicially *decreed.* The same principle obtained under the Spanish rule, and it was deemed obligatory. It was the law of the land. (5 American State Papers, Green's edition, 706; Stoddard's Sketches of Louisiana, page 247, and Mitchell *v.* The United States, 9 Peters, 742, in which the Court says that "by the common law the King has no right of entry on lands which is not common to his subjects; the King is put to his inquest of office, or information of intrusion, in all cases where a subject is put to his action; their right is the same, though the King has more convenient remedies in enforcing his.") The same principle was continued by Mexico after it became independent of Spain. (Hornsby *v.* The United States, 10 Wallace, 240.) It also applies in this country. Mitchel *v.* The United States, 9 Peters, 742; Schulenberg *v.* Harriman, 21 Wallace, 45.) It is founded in equity and necessity, for in the very nature of things there can be no reclamation of lands for a breach of conditions in a grant, until the fact of the breach has been found by a competent and authorized tribunal. "Nothing is so consonant to natural equity, as to dissolve a thing by the same means by which it was bound." (2 Inst., 359.)

But aside from this negative evidence that the grant to Coleman had not been forfeited but remained in full force and effect at the time of the acquisition of the territory by the United States, the acts of the Spanish authorities in

relation to it afford positive and conclusive evidence that it remained in force and that no forfeiture had been incurred. We have already shown that in 1806, seven years after the date of the grant and four years after the time prescribed for the fulfillment of the conditions, Pintado, the Spanish Surveyor General, recognized the legal existence of the grant, and ordered a survey thereof. Added to this Spain remained in the possession of West Florida, the country embracing these lands, until 1813, actually making sales and grants of lands until 1810, (Laws, Opinions, and Instructions, 2, p. 36, and Cosby's Reports, 3d Am. State Papers, Green's edition, pp. 45–60;) yet with a single exception the authorities respected the concession to Coleman. The exception is an order of survey, which was never executed, given by de Grandprè in 1806 to Robert Yair or Yan, for 1,000 arpens in St. Helena, reported by Commissioners Rannells and Kinchin, January 19, 1825, as No. 42, Register B, No. 2, 1st Class. (4 Am. State Papers, Green's edition, p. 312.) From the fact that this order was never executed it is probable that it was found to be in conflict with Coleman's rights, and, therefore, erroneous. But as the Commissioners' report showed that Yair's claim was settled upon and cultivated prior to April 15, 1813, Congress donated the lands to Yair by section 1, act of May 4, 1826. (4 Statutes, 159.) Section 2 of said act contained this proviso: "That nothing contained in this act shall be so construed as to extend further than a relinquishment of all right and title to said lands, on the part of the United States, without prejudice to the interests of third persons." The Spanish order of survey to Yair saved the rights of all adverse claimants. Such was the rule. They always issued with a stereotyped phrase or condition that the lands were vacant and that the concession should cause inconvenience (or injury) to no one. This was the language of the order in Coleman's case. (Document "A.") We cannot doubt that it was

the same in the order in favor of Yair. His donation claim has since been surveyed or located by the United States, and is now represented as Section 43, Township 1 South, Range 7 East, containing 843 acres, only 837.80 of which conflict, however, with the prior grant to Coleman. (See plan F and testimony of Henry Gascon.) These also show that there is not another written title of any grade whatsoever originating under or emanating from a foreign source or government in conflict with Coleman's concession. It is clear that Coleman did not forfeit his grant or any part of it, and that it was not affected by an erroneous order of survey, to Yair, never executed, and that at the time of the change of sovereignty he had a subsisting and valid right and title to the lands granted, which the Spanish government recognized and respected, and which by the law of nations and its treaty stipulations and obligations the United States is bound to recognize, respect, and confirm. But defendant's answer assumes that the suit brought by McMicken under the act of June 17th, 1844, and the judgment dismissing the same, rendered March 27, 1849, is a legal bar to these proceedings.

An examination of the judgment will show that it was not rendered on the merits, but was merely a dismissal of the action. (Printed record, p. 40.) But had it been rendered on the merits it would have been no bar to this action, as the right of plaintiff was revived and renewed, if lost, by the act of 1860. This was not an open question. It was settled in the case of the U. S. v. Lynde, 11 Wallace, 632. The claim in that case had been sued on under the act of 1844, and rejected on the merits. Yet when the said claim was before the Supreme Court under the act of 1860 it was entertained and confirmed. Thus we see that if the judgment against McMicken had been on the merits instead of a mere non-suit, it could not be pleaded or treated as a bar to this action. The intention of Congress to allow, by the act of 1860, all claims to be sued on anew

is manifest from the language and the circumstances attending its passage. Congress was familiar with the history of these grants, and knew that many of them had been sued on grounds which by the act they were then about to pass were clearly waived and remitted. Claims previously sued on and rejected were not excepted. The act was intended to and did relax the rigid rules, by which the confirmation of meritorious grants had been previously prevented.

Fourth. Has plaintiff succeeded to the rights of Coleman?

The evidence on this point is contained in document B, which is a deed from Coleman to Charles McMicken, duly proven, conveying the lands embraced in the grant; and document E, being the will of Charles McMicken, duly admitted to probate, proven and established. To the first of these documents no objection is made, and it fully establishes a conveyance from Coleman to Charles McMicken. To the second, objection was made and a motion was filed to suppress it, on the following grounds:

1st. That it is irrelevant, and shows no title in the plaintiff or his *cestui que trust*; 2d, that it appears that the estate of Charles McMicken, the testator, is in course of administration and in the hands of the executors, who alone have the right to sue; 3d, that there is no disclosure, in the record, of any order by competent authority putting plaintiff, as trustee, in possession of the claim; and 4th, that it does not appear that said will has been admitted to probate and made executory in Louisiana. The 2d, 3d, and fourth points upon which the suppression is asked are so frivolous and groundless as to relieve us of the necessity of discussing them at length. The plaintiff was not required to be in possession of the lands to entitle him to sue. On the contrary the act, under which he sues, required that he should be out of possession. (Section 11, act of June 22, 1860.) The probate of the will, in Louisiana, was not necessary to enable him to institute or main-

tain these proceedings, against the United States, for a confirmation of title, &c. Its establishment in Ohio is sufficient to enable him to appear, as a legal representative of Charles McMicken, in a proceeding, between him and the United States, under the act of 1860, although it may not enable him to sue in actions of ejectment and in the local courts of Louisiana. The document does not show that the estate is *now* in process of administration and in the hands of the executors, but if it did it would not prevent plaintiff from proceeding to protect his interests, by securing a confirmation of a claim, embraced in a bequest to him.

So far as the first point is concerned, that the will does not show title in plaintiff, &c., it is a matter of construction, which we can leave to the Court without argument, as, under the doctrine laid down by it in the case of The United States *v.* Patterson, (15 Howard, p. 12,) it is not necessary that the proof of title in plaintiff should be complete and conclusive, to justify a confirmation of the grant. In that case Patterson claimed as a purchaser, of an interest in two Spanish grants, from the heirs of William Barr. A decree was rendered by the District Court, in which his suit was brought, confirming his claim. An appeal was taken, by the United States, to the Supreme Court. In considering and deciding this appeal, the latter Court found that Patterson had not made out his title, under the heirs of Barr, but, as the original grant was deemed entitled to confirmation, affirmed the decree of the District Court, with the direction "that the confirmation shall be for the use of the legal representatives of William Barr, deceased." Therefore, should the Court doubt the sufficiency of the plaintiff's proofs of title, in himself, it can and should dispose of the matter, by confirming the grant in general terms to (Charles McMicken, deceased, or) his legal representatives, as title is, unquestionably, traced down to him. It is not necessary that the question of

present ownership should be absolutely determined and settled in these proceedings. Commissioners, in confirming claims of a similar nature and under similar laws, uniformly do so in the manner adopted by the Court in the Patterson case, and leave the question of present ownership to be afterwards determined in a proper and legal manner, (Connoyer *v.* Schaeffer, 22 Wallace, 254;) and locations of lieu lands made pursuant to such a confirmation would be in the same form and inure to the benefit of the confirmee or his legal representatives, whoever they may be.

Fifth. Is the plaintiff entitled to a judicial recognition and confirmation of his claim?

It follows, from what we have already said and shown, that he is, either directly, in his own name, or generally in the name and for the use of the legal representatives of Charles McMicken, deceased. That the claim should be confirmed there can be no doubt. The form of the confirmation is not material, but may be according to the facts established.

Sixth. Has the Government of the United States disposed of the lands granted, or any portion thereof, as public lands, to parties other than plaintiff, and those under whom he claims?

Plan F and the testimony of Gascon show the particular and the aggregate area of all the claims in conflict with the grant to Coleman; and the certificate of the Register and Receiver of the proper land office shows, as alleged by plaintiff's petition, that all the lands have been sold or disposed of by the United States. This is certainly a sufficient showing under the act of 1860. It is the best evidence the nature of the case admits of.

Seventh. Is the plaintiff entitled to make entry of other lands in lieu of those disposed of and to judgment to that effect?

There can be no doubt that he is, if he be found enti-

tled under the will of Charles McMicken; and if not, that the legal representatives of the said Charles McMicken, deceased, are so entitled.

Section 6 of the act of June 22, 1860, provides that the party in whose favor a title is confirmed shall have the right to enter a quantity of the lands equal to that sold by the United States; and section 11, that when the court shall adjudge a claim valid, patent shall issue for so much of the lands claimed as remain unsold, and that for so much as may have been sold the provisions of section 6 shall apply.

Plaintiff has unquestionably established the grant to Coleman, the transfer of title to Charles McMicken, and his death, the execution and probate of his will, and that he (the plaintiff) is a party in interest under it. He has also established the fact that all the lands granted to Coleman have been disposed of by the Government. This clearly entitles him or the legal representatives of Charles McMicken to enter the quantity so disposed of, 13,848.82 acres, the equivalent of 16,400 arpens, and to judgment therefor.

The fact, referred to in defendant's answer, that the lands have in whole or in part been donated to settlers by the Government, does not affect this right. No grants, in conflict with this claim, emanating from a foreign source, either senior or junior, have been recognized or confirmed. Donations are included in the general term "sold," as used in the act of 1860, and this court has so held heretofore, as we are informed, and the question is no longer an open one. The Government having by its own act disposed of the lands and placed it beyond its power to give the grantee or his legal representatives a clear title thereto, is bound by the act of 1860 to give them lieu lands.

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In the Supreme Court of the United States.

ANDREW McMICKEN
vs.
THE UNITED STATES. } No. 391.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief for the United States.

In the Supreme Court of the United States.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief for the United States.

This case, besides being liable to the observations made in the brief on behalf of the government in the *Bouligny case*, No. 413, at this term, for which reference is respectfully made to such brief, presents difficulties peculiar to itself.

1. The petitioner is unable to produce the original "grant or concession or order of survey duly executed," upon which he relies for title.

The petition, certificate, and order of survey which he has produced are mere "copies" (Record, folio 12) from the records of a certain board of commissioners to whom the claim had been presented in the year 1825. (Record, p. 39.)

The act of 1860, ch. 188, sec. 7, provides upon this point that "the *evidence* offered before such former

board, and *remaining of record* shall be admitted on the examination of the claims made under the provisions of this act." (12 Stat., 87.) That is, as I submit, the *very evidence*, and not mere copies thereof, *i. e.*, that which was admitted before is to be admitted again. The phrase "remaining of record," means *remaining on file*, and is commonly applied to depositions, competent affidavits, and the like.

Section 7, above cited, mentions two classes of testimony that may be used in suits like the present: (1) *facts* reported by the former board as proved, and (2) *evidence* offered before such board, &c., as above. The former were to be taken as *prima-facie true*, the latter was only to be *admitted*.

There is no allegation here that this order of survey was *reported as proved* before the former board. It is therefore to be proved now; that is, *the original* is to be produced and examined. If this be not so, it will result that a thing which was only *evidence* before, and not reported as proved, is now to be accepted as *prima-facie true*, contrary to the provisions of the act.

I submit that there is nothing in the provisions of the above act of 1860 to assimilate the case of *evidence* therein designated as *remaining of record*, &c., to that of deeds registered under the ordinary State registry laws, in which an *ex parte* probate before the register entitles a copy of a deed to be read in evidence.

It does not appear here that there has been a previous *probate* of the concession, &c., or it would be reckoned a *fact proved*, &c., within the words of the act of 1860.

The word *record* does not mean *copies*. (Marchand *v.* Coyle, 18 La. Ann., 482.)

Supposing the above to be the true construction of the act of 1860, I may add that there is nothing in the law of Louisiana, *in like cases*, to justify upon other grounds a reception of these copies. The act of 1861, after providing that from and after its passage *copies of the record* of "*any patent for land*, certificate of the register, receipt of the receiver, whether issued or to be issued by the officers of the State of Louisiana, or the general government," "recorded in the office of the recorder of the parish, &c., shall be admissible in evidence in all causes pending before any of the courts of this State," adds: "*Provided*, That the party proposing to use such evidence shall make affidavit that the original of such patent or certificate is not in his possession or under his control. (Voorhees, Rev. Stats., sec. 1445, p. 373.) No such affidavit has been made in the present case. (Record, folio 102.)

2. The instrument conferring title in this case is a *concession* or *order of survey*, which has the following clause: "Upon the express condition to make the high roads and do the usual clearing of timber in the absolutely fixed limit of one year, and that this concession is to remain null and void if at the expiration of the precise space of three years the land shall not be found to be settled upon and to not be able to alienate it (the land) within the same three years, under which supposition there shall be carried out uninterruptedly the proceedings of the survey which he (the surveyor) shall transmit to me, so as to provide the interested party with the corresponding title-papers in due form."

By this it seems plainly expressed that the *making of a high-road and clearing within one year*, and of *a settle-*

ment within three years, together with a *nonalienation within three years*, should be conditions precedent to *the issue of the corresponding title-papers in due form.*

No evidence of a performance of these conditions is given now, or was given before the commissioners in 1825, or before the United States district court in 1849. (Record, pp. 35, 39, and 40.)

These are conditions, not in an executed grant, but in a paper *preliminary* to a grant (Menard *v.* Massey, 8 How., p. 306), and are expressly defined therein to be acts without which no grant, *i. e.*, *corresponding title-papers*, will be issued. Arredondo's case (6 Pet., p. 744), therefore, does not apply. See Kingsley's case, 12 Pet., 476; Wiggins's case, 14 Pet., 334; Boisdore's case, 11 How., 63.

Nor can it reasonably be held that Pintado's authorization of a survey in 1806 (Record, folio 16) was a waiver of the conditions expressed in the concession, or constitutes any evidence that they had been performed. Pintado's office gave him no *power* over the conditions, and his bare authorization of a survey, *which, for some reason not explained, was never executed*, is no evidence of the performance of conditions that were to be precedent,—*not to such survey*, but to the issue of a grant. The *survey* was not to depend upon the *clearing*, &c., and therefore an authorization thereof, *especially if not executed*, affords no presumption thereabouts.

Again, even if these conditions were subsequent, and contained in a grant, the act of Congress under which the land in question was subjected to survey as *public land* was a sufficient inquest of office as to the breach of such conditions. (Repentigny's case, 5 Wall., 211.)

It is true that the act of 1860 expressly provides that in case the lands claimed have been *sold* as public land, the claimants shall have *lieu* land; but Congress did not mean thereby to deprive the statute under which they had been sold of any quality that it might have as *an inquest* whether the estates of some of the claimants were not forfeitable. In other words, the act of 1860 indemnified claimants against only *one* effect of previous statutes extending public surveys, &c., over the land claimed, *i. e.*, *a sale* of such land; but it left untouched all other effects thereof, and among such their effect as inquests of office ascertaining forfeitures for breach of conditions subsequent contained in the original title-papers.

However, it seems plain that the conditions here were *precedent*, so that their non-performance would have barred the claimant from obtaining a complete title from Spain, if that government had continued, and therefore is fatal to the present claim.

S. F. PHILLIPS,
Solicitor-General.